



**BROWNFIELDS CLEANUP REVOLVING LOAN FUND
LOAN AGREEMENT
BETWEEN**

BROWN ROAD GROUP, LLC

AND

OAKLAND COUNTY

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THIS LOAN AGREEMENT (this "Agreement") is entered into as of the ____ day of November, 2003, by and between the **BROWN ROAD GROUP, LLC** ("BORROWER"), a Michigan limited liability company with its principal office at 115 South Main Street, Suite 300, Royal Oak, Michigan, and **OAKLAND COUNTY**, a Michigan county, organized and existing pursuant to Act 139, Public Acts of Michigan, 1974, whose principal address is 1200 N. Telegraph Road, Pontiac, Michigan 48341 ("LENDER").

RECITALS

Borrower is a Michigan corporation and the fee owner of 143 acres of certain real property located in the City of Auburn Hills and Township of Orion in Oakland County, Michigan (the "Property"). The Property is legally described in Exhibit A attached.

The Borrower, has and continues to engage in removal actions on the real property owned by the Borrower, which is generally described in Exhibit B (the "Action Memo").

In order to induce Lender to make a loan, Borrower has executed concurrently herewith a promissory note in the form of Exhibit C attached hereto (the "Promissory Note") a mortgage securing payment of the note in the form of Exhibit E ("Mortgage"), and an obligation to repay the Loan Funds by execution of a Loan Guaranty ("Guaranty"), attached hereto and made a part hereof as Exhibit D. The Promissory Note, the Mortgage and the Guaranty are collectively referred to herein as the "Loan Documents."

Lender is a recipient of the United States Environmental Protection Agency Brownfields Cleanup Revolving Loan Funds (the "Funds") and is authorized to make certain loans therefrom.

The Property has been identified by the Oakland County Brownfield Redevelopment Authority (OCBRA) as a Brownfield Site in need of environmental removal actions. The OCBRA included the Property in a brownfield plan adopted pursuant to the Brownfield Redevelopment Financing Act, Michigan Public Act 381 of 1996, as amended.

Borrower will comply with the requirement of Public Act 451 Part 201 of the Michigan Public Acts of 1994 as amended.

Borrower wishes to borrow from Lender, and Lender is willing to lend to Borrower the amount set forth in the Promissory Note on the terms and conditions contained herein.

NOW THEREFORE, Lender and Borrower, intending to be legally bound, agree as follows:

ARTICLE I LOAN

1.01 Loan. Lender agrees to make a loan in the amount of Seven Hundred Thousand (\$700,000) Dollars (the "Loan"). The Borrower shall evidence its obligation to repay the Loan Funds by execution of a Promissory Note, a Letter of Credit or a Mortgage and a Loan Guaranty, which attached hereto and made a part hereof. The Promissory Note, Mortgage and the Loan Guaranty shall contain specific terms for the repayment of the Loan Funds. Prior to disbursement of the Loan, and subsequent to the execution of the Action Memo, Borrower shall provide Lender with a standby Letter of Credit for the repayment of the Loan on the fifth anniversary of the date of execution of the Promissory Note or shall provide Lender financial assurance satisfactory to Lender that it can repay the Loan and provide further security with execution of a Mortgage and a Loan Guaranty

1.02 Promissory Note. The obligation of the Borrower to repay the Loan shall be evidenced by the Promissory Note, all terms of which are incorporated herein by reference. The Promissory Note shall mature on the fifth anniversary of the date of execution of the Promissory Note. Upon maturing, any remaining balance owed Lender shall be due and payable. Principal, interest, and late payments, if any, on the Loan are payable in accordance with the terms of the Loan Documents.

1.03 Prepayment Prior to Maturity. Borrower may, without premium, prepay any portion of the principal on the Loan prior to maturity. Lender shall release the Letter of Credit obligation upon payment of the Loan principal.

1.04 Purpose. Borrower shall only use the proceeds of the Loan for activities in the approved removal actions at the Property (the "Work") as set forth in the Work Plan, as the same may be amended, supplemented or replaced from time to time as approved by the Lender, and as determined by the Lender. The Work consists primarily of a leachate and methane gas collection system on the Property as described in the Work Plan attached as Exhibit F. No Work shall be commenced for which the proceeds of this Loan will be utilized unless and until the Action Memo attached hereto as Exhibit B has been reviewed and approved by Lender, and executed by all parties to this Agreement. Nothing in this Agreement shall be construed to require or compel Lender to approve the Action Memo. No interest shall accrue on this Loan unless and until Lender approves the aforementioned Action Memo.

1.05 Contractor Qualifications and Insurance. Borrower affirms that

its principal environmental consultant Fishbeck, Thompson, Carr & Huber (the "Contractor") has examined the Property, is fully familiar with local conditions, and is able to execute the Work. The Contractor shall carry out the Work consistent with the level of care and skill exercised by similar contractors performing comparable services under comparable circumstances. The Contractor shall possess the appropriate license from the Contractor's state licensing board. The Contractor shall maintain and keep in full force and effect the following insurance: errors and omissions, contractor's pollution and general liability insurance with a minimum of \$1,000,000 coverage per accident or claim, property insurance, and workman's compensation insurance.

1.06 Transaction Fees. Lender may, at its option, charge transaction fees in an amount not to exceed One Thousand (\$1,000) Dollars for document preparation and recording and all other services related to this Loan Agreement.

1.07 Loan Collection Services. After 24 months, Lender may, at its option, charge a fee for loan collection services in an amount not to exceed Two Hundred (\$200) Dollars per payment.

1.08 Default. Upon default arising from provisions of Article V, Borrower promises to pay to Lender all collection and attorney's fees and expenses actually incurred by Lender, whether or not litigation is commenced, including, without limitation, penalties and/or fees due under this Agreement.

1.09 Security. As security for Borrower's indebtedness to Lender, Borrower shall give Lender the Loan Guaranty. Borrower acknowledges that a Cooperative Agreement with the U.S. Environmental Protection Agency is the source of all funds loaned hereunder and that the Lender is under no obligation to loan and will not be required to loan any of its own funds.

1.10 Inspection and Right to Stop Work. Lender shall have the right, but not the obligation, to enter the Property and inspect the Work during its course and within thirty (30) days following completion of the Work. Borrower shall provide notice to Lender at least ten (10) business days prior to completion of the Work. Lender shall select a Site Manager. The Site Manager will review and inspect the Work in coordination with the Borrower's Project Coordinator. Lender may stop the Work if it is not satisfactory or not substantially in accordance with the plans and order work replacement at Borrower's expense. Lender shall have the right, but not the obligation, to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Agreement upon written notice of at least thirty (30) days to Borrower and an opportunity to cure. The notice shall include a clear description of the proposed cure and the approximate cost of the same. Borrower recognizes that the Site Manager has the ability to stop Work immediately in the event of an imminent and substantial threat to human health or the environment. Lender's actions under this subsection shall not be deemed to create any ownership or operator status as that term is defined under the environmental laws set forth in Section 4.07 of this Agreement; and, furthermore, Lender shall

be deemed to be a "response activity contractor" under Part 201 of Public Act 451 of the Michigan Public Acts of 1994, as amended, for any actions it does take under this subsection.

1.11 Loan Proceeds. Loan proceeds will be made available only after the Action Memo is executed by all the parties hereto and shall only be used to fund Borrower's Work performed after the effective date of the Action Memo. Once the Action Memo is properly executed loan proceeds shall be disbursed in its entirety upon Borrowers request.

1.12 Adherence to Project Budget and Schedule

The Work Plan shall include a Project Schedule and Project Budget, which shall be reviewed and approved by Lender. Borrower agrees to keep all expenditures from proceeds of the Loan within the approved Project Budget, and to complete the work within the Project Schedule. Borrower agrees to obtain Site Manager's and Lender's prior approval of any substantive changes in the Work, the Project Budget, or the Project Schedule. Such approval(s) shall not be unreasonably withheld or delayed.

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.01 Environmental Warranties. Borrower represents and warrants that:

- A The Property is not listed or proposed for listing on the National Priorities List of the U.S. Environmental Protection Agency.
- B Borrower did not generate or transport hazardous substances, pollutants or contaminants at or to the Property.
- C Borrower acquired the Property after the disposal or placement of hazardous substances, pollutants and contaminants on the Property and has not caused, contributed to, permitted or exacerbated the release of such substances, pollutants or contaminants on or from the Property. Borrower is not otherwise a responsible person as defined in Michigan Public Act 451, Part 201 of the Michigan Public Acts of 1994.
- D Borrower is not aware of any environmental contamination at the property other than that reflected in the following documents (the "Project Documents") that have been supplied by Borrower to Lender for Lender's review:
 - 1. Bald Mountain Land Preserve, Oakland County, Michigan Proposed Landfill and Remediation Plan (cir. 1980).

2. Soil Testing Services, Inc. Construction Specifications and Operating Procedures Sanicem Landfill (March 1982).
3. EPA Hazardous Site Evaluation Division, Field Investigation Team Zone II, Draft Screening Site (September 1990).
4. Hydrogeological Investigation, Sanicem Landfill, Oakland County (January 1994)
5. Risk Assessment Report, Volume I, Human Health Risk Assessment, Sanicem Landfill (June 1995).
6. Scope of Work Summary Sanicem Landfill Site (October 1995).
7. Removal Investigation Report, Sanicem Landfill, Oakland County, Michigan (November 1995).
8. Risk Assessment Technical Memorandum, Sanicem Landfill, Oakland County, Michigan (November 1995).
9. Additional Removal Investigation Activities at the Sanicem Landfill Site (October 17, 1996).
10. Analytical Reports for Sanicem Landfill, Oakland County, Michigan (June 2000).
11. Preliminary Geotechnical Evaluation Report, J. Fons Property, Lapeer and Bald Mountain Roads – Auburn Hills, Michigan (October 2000).
12. Part 201, Act 451, Baseline Environmental Assessment of Former Sanicem Landfill (May 21, 2002).
13. Revised Act 381 Work Plan to Conduct Eligible MDEQ response Activities for the Former Sanicem Landfill City of Auburn Hills (August 29, 2002)
14. Revised Act 381 Work Plan to Conduct Eligible MDEQ Response Activities for the Former Sanicem Landfill Orion Township (August 29, 2002).
15. Interim Report of Findings of Methane Investigation and Remediation of the Former Sanicem Landfill (October 9, 2003)
16. Letter from Ben Matthews, MDEQ regarding site conditions dated October 20, 2003.

2.02 Legal Status. Borrower is a Michigan limited liability company validly existing under the laws of the State of Michigan.

2.03 Interest in Property. The Borrower represents and warrants that it is the fee owner of the Property, and that it will remain the fee owner until the completion of the Work.

2.04 No Violation. The making and performance by Borrower of this Agreement does not violate any provision of federal, state or local law, or result in a breach of or constitute a default under any agreement, indenture or other instrument to which Borrower is a party or by which Borrower may be bound.

2.05 Authorization. This Agreement, the Promissory Note, the Mortgage and the Loan Guaranty have been duly authorized, executed and delivered and are valid and binding agreements of Borrower.

2.06 Litigation. Presently, there are no pending or threatened actions or proceedings before any court or administrative agency against the Borrower or the Property.

2.07 Correctness of Financial Statement. Borrower represents and warrants that it will present financial statements to the Lender that are the full and complete financials presented to Borrower's principal financial lender on this Project, if a Letter of Credit for repayment is not presented.

2.08 Survival. The above-listed representations and warranties shall survive the execution of this Agreement.

ARTICLE III CONDITIONS PRECEDENT

3.01 The obligation of Lender to make the Loan contemplated hereunder is subject to the fulfillment of the following conditions:

- A. **Approval of Lender's Counsel.** All legal matters incidental to Lender's commitment to issue the Loan hereunder shall be satisfactory to Lender's counsel, including the form, validity and enforceability of this Agreement and Exhibits C (Promissory Note), D (Guaranty) and E (Mortgage).
- B. **Compliance.** The representations and warranties contained herein shall be true on and as of the date of the signing of this Agreement with the same effect as though such representations and warranties had been made on and as of such date, and on such date no Event of Default as defined in Article V herein, and no

condition, event or act which, with the giving of notice or the lapse of time or both, would constitute an Event of Default shall have occurred and be continuing or shall exist.

- C. **Identification of Contractors.** Borrower shall submit within fifteen (15) days after execution of the Action Memo to Lender a list identifying all of Borrower's contractors and subcontractors for the Work.
- D. **Cooperation With Audit and Public Participation Requirements.** Borrower agrees to cooperate fully with an audit of the Loan and the Work, if an audit is performed. Borrower shall also cooperate with and assist Lender in responding to and/or addressing any significant comments received on the Work Plan or Action Memo when they are published for public comment.
- E. **Erect Sign.** Borrower agrees to erect a sign on the Property, approved by Lender, stating that the Work is being financed in part by U.S. EPA BCRLF Funds and the Lender.
- E. **Issuance of Action Memo.** Lender shall be under no obligation to advance the loan proceeds unless and until the Action Memo is fully executed by all the parties hereto.

ARTICLE IV AFFIRMATIVE COVENANTS

4.01 Covenants. Borrower covenants to do the following items indicated in this Article for so long as amounts remain due under the Promissory Note.

4.02 Punctual Payment. Borrower shall punctually pay the principal of and any interest on the Promissory Note at the times and place and in the manner specified in the Promissory Note.

4.03 Accounting Records. Borrower shall document all the uses of the proceeds of the Loan, and maintain adequate books and accounts in accordance with generally accepted accounting principals consistently applied. Borrower shall permit any representative of Lender at any reasonable time to inspect, audit and examine such books. Borrower shall maintain documentation on the use of the proceeds of the Loan for ten years after completion of removal actions supported by loan or until the resolution of any litigation, claim, negotiations, audit, cost recovery or other action involving the documents, whichever is longer and shall obtain approval of Lender prior to destroying such documentation.

4.04 Annual and Monthly Reports. The Borrower shall furnish annual reports that document that it is in material compliance with all relevant federal and state environmental regulations during the life of the loan. Once the Action

Memo is fully executed, the Borrower shall also provide to Lender's Site Manager monthly status reports on the first day of each month, which provide the following information: a) the Work done in the last thirty (30) days; b) the Work to be performed in the next thirty (30) days; c) any substantive concerns encountered in the performance of the Work or in adherence to the Project Schedule or Project Budget; and d) proposed solutions for concerns encountered.

4.05 Annual Financial Reports. Borrower shall furnish annual financial statements, including basic accounting and control mechanisms to track legitimate use of the proceeds of the Loan and document that such proceeds are put to authorized uses. Borrower's accounting system must track site-specific costs, cost activity and operable unit (if applicable). Financial statements include: (a) income statements; (b) balance sheets; and (c) cash flow statements.

4.06 Other Documentation. Borrower shall furnish such other information as Lender may from time to time reasonably request.

4.07 Compliance With All Laws. Borrower shall carry out the Work in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.) ("CERCLA"); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments, 40 C.F.R. Part 31; Cooperative Agreements for Superfund Response Actions, 40 C.F.R. Part 35, Subpart O; the National Oil and Hazardous Substances Contingency Plan ("NCP"), and 40 C.F.R. Part 300. Any and all terms in this document, which are defined in CERCLA and/or NCP, shall have the same meaning in this Agreement as in CERCLA and/or NCP.

4.08 Compliance With Executive Order 11246. Borrower shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. 60-4 relating to federally-assisted construction contracts.

4.09 Davis Bacon Act. Borrower shall carry out the Work in accordance with the Davis-Bacon Act of 1931 (CERCLA § 104(g)(1), 40 U.S.C. §§276a to 267a-5 and 42 U.S.C. § 3222 as set forth in CERCLA § 104(6)). Compliance with the Davis-Bacon Act requires payment of federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with loan funds. Borrower must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.

4.10 Insurance. In addition to Contractor's insurance requirements, Borrower shall maintain and keep in full force and effect insurance of the types and amounts necessary to protect the security for Borrower's indebtedness to the Lender, including without limitation, commercial general liability insurance with a minimum of \$1,000,000 coverage per accident or claim, property insurance and workman's compensation insurance (if applicable), and fire

insurance for the value of the property. Insurance coverage shall be primary in relation to any other insurance or self-insurance available to the Lender. Insurance shall be placed with an insurer with an A.M. Best's Rating of no less than A:VII. The Lender shall be named Additional Insureds. Borrower shall deliver to Lender from time to time at Lender's request certificates of insurance or policies setting forth all business insurance then in effect. Policies shall be endorsed to provide that the Lender shall be provided with written notice of thirty (30) days for any cancellation, suspension or reduction in limits.

4.11 Taxes and Other Liabilities. Borrower shall pay and discharge when due any and all indebted obligations, assessments, taxes (real and personal), including federal and state payroll and income taxes, except such as Borrower may in good faith contest or as to which a bona fide dispute may arise; provided provision is made to the satisfaction of Lender for eventual payment thereof in the event that it is found that the same is an obligation of Borrower.

4.12 Litigation. Borrower shall promptly give notice in writing to Lender of any litigation pending or threatened against Borrower or the Property.

4.13 Non Discrimination and Equal Opportunity. Borrower agrees to comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, Borrower shall undertake good faith efforts in compliance with 40 C.F.R. § 35.6580 to give opportunities to qualified Small Business Enterprises ("SBE"), Minority Business Enterprises ("MBE") and Women-Owned Business Enterprises ("WBE") to submit proposals and bids and provide services on contracts and subcontracts for services and supplies. Borrower shall submit a report of such efforts in a manner acceptable to the Lender.

4.14 Debarment and Suspension. Borrower certifies that Borrower and, to its knowledge, Contractor:

- A are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state or local (hereinafter "public") transactions;
- B have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for (i) fraud or commission of a criminal offence in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction, (ii) violation of federal or state antitrust laws, or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- C are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under Section 4.12 (b) hereof; and

- D have not within the preceding three years had a public transaction terminated for cause or default.

4.15 Environmental Compliance. Borrower certifies that it is not now, and has not in the past, been subject to any penalties resulting from environmental non-compliance at the Property. Borrower further certifies that it will conduct removal actions in accordance with Michigan Public Act 451, Part 201 of the Michigan Public Acts of 1994, and will modify the removal actions for which the proceeds of this Loan are utilized, as required by the Lender based on unforeseen site conditions or public involvement requirements.

4.16 Notice to Change in the Work. Borrower shall immediately report to Lender in writing any potential changes to the Work described in Section 1.04 hereof and the discovery of hazardous substances, pollutants or contaminants not identified in the Work or Project Documents. The Site Manager and Lender shall approve all changes or modifications to the Work or related documents prior to such change or modification becoming effective.

4.17 Completion of Project. Borrower agrees to complete the Work within the Project Schedule. Not later than thirty (30) days after construction activities are complete, Borrower shall notify Lender that the Work is complete. The notice shall contain a certification and documentation necessary to establish the following:

- A. The Work was conducted in accordance with the Work Plan, the Action Memo and the Loan Document. Borrower shall promptly supply supplemental information as needed by the Lender.
- B. All proceeds of the Loan were expended for eligible project costs.
- C. That the Work, as implemented, is protective of human health and the environment.

ARTICLE V EVENTS OF DEFAULT

5.01 Default. The following shall constitute Events of Default:

- A Default by Borrower in any payment when due of principal or interest under the Promissory Note, which default is not cured within thirty (30) days of receipt of a notice of default.
- B Any representation or warranty made by Borrower hereunder or in the Loan Documents proves false or misleading in any material respect.
- C Use of the proceeds of the Loan for purposes other than those

stated in Section 1.4 or approved in writing by Lender.

- D Default by Borrower in the performance of any other term, covenant or agreement contained herein, or in the Loan Documents, which default is not cured within thirty (30) days of receipt of a notice of default (or such longer period as shall be reasonably necessary to cure such default provided Borrower promptly commences such cure and thereafter diligently pursues such cure to completion).
- E Default by Borrower under the terms of any agreement or instrument pursuant to which Borrower has borrowed money from any person or entity for the Property, which default is not cured within thirty (30) days of receipt of a notice of default (or such longer period as shall be reasonably necessary to cure such default provided Borrower promptly commences such cure and thereafter diligently pursues such cure to completion).
- F Failure of Borrower to satisfy any judgment or remove any levy or other process against the assets of Borrower within thirty (30) days after the entry or levy thereof, or at least five (5) days prior to the time of any proposed sale under any such judgment or levy.
- G The breach by guarantor of any of the financial covenants in the Loan Guaranty, which breach is not cured within thirty (30) days of receipt of a notice of default.

5.02 Acceleration. Notwithstanding anything to the contrary in the Promissory Note, upon an Event of Default, any indebtedness of Borrower under this Agreement and the Promissory Note shall, at Lender's option and without notice, become immediately due and payable without presentment, notice or demand, all of which are hereby expressly waived by Borrower, and the obligations, if any, of Lender to permit further borrowing hereunder shall immediately cease and terminate.

5.03 Secure Site. In the event of default, Borrower shall secure the site. The cost of securing the site is the responsibility of the Borrower. If Borrower fails to secure the site within 24 hours, Lender may, but shall not be obligated to, do so at the Borrower's sole cost.

ARTICLE VI REMEDIES OF LENDER

6.01 Event of Default. Upon the occurrence of an Event of Default, Lender may exercise, singly or in combination, any or all of the rights, powers and privileges provided in this Article VI and all other remedies available to the Lender under the Loan Documents, at law or in equity, at any time and from time to time. Such exercise shall not constitute a waiver of any of Lender's rights or remedies thereunder, whether or not the indebtedness evidenced by the

Promissory Note shall be due and payable and whether or not Lender shall have instituted any actions for the enforcement of its rights under the Promissory Note. Failure of Lender to exercise any rights or remedies at any time shall not constitute a waiver of any of its rights or remedies. Lender may exercise any and all of the rights, powers, privileges and remedies provided in the Loan Documents.

6.02 TIF Recapture. In the event of a default under Article V, Lender shall have the right as allowed by law to retain and subordinate to the security previously given to Huntington Bank, or require that the local taxing jurisdictions retain, any Combined County taxes that would otherwise be used to reimburse Lender for eligible costs pursuant to any approved Brownfield plan for the Sanicem Site (including the portions located in Orion Township and Auburn Hills), and such right shall continue until the loan (principal and interest) is paid in full. Borrower agrees to execute any and all documents that Lender might reasonably require to implement this provision. As allowed by law, any amounts so retained shall be forwarded to the Oakland County Treasurer and shall be set off against the outstanding principal and interest on the Loan.

ARTICLE VII INDEMNIFICATION

7.01 The Borrower shall, at Borrower's expense, defend, indemnify, and otherwise hold Lender, its officers, employees and agents harmless against any and all claims, demands, losses, expenses, damages (general, punitive or otherwise) and causes of action (whether legal or equitable in nature) asserted by any person, firm, corporation, or other entity and arising out of or caused by Borrower's actions or inactions with regard to the Property, or by the use of the proceeds of the Loan. Borrower shall pay Lender upon demand all claims, judgments, damages, lawsuits or expenses (including legal expenses) incurred by Lender as a result of any legal action arising out of or caused by any of the Loan Documents, or by the use of the proceeds of the Loan.

ARTICLE VIII MISCELLANEOUS

8.01 Waiver. No delay or failure of Lender, or any holder of the Promissory Note exercising any right, power or privilege hereunder or in the Loan Documents shall affect such right, power or privilege; nor shall any single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such a right, power or privilege affect such right, power or privilege. The rights and remedies of Lender hereunder are cumulative and not exclusive. Any waiver, permit, consent or approval of any kind by Lender, or any holder of the Promissory Note, of any breach or default hereunder, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing.

8.02 Successors. This Agreement shall be binding upon the permitted assigns or successors of Borrower and Lender. This Agreement shall not be assigned or transferred by Borrower without the written consent of Lender and

any purported assignment or transfer without such prior written consent shall be void.

8.03 Notices. Any notice, consent, waiver, request or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed given (a) on the same day if delivered personally, (b) three business days after mailed if delivered by certified or registered mail, return receipt requested, postage prepaid, (c) one business day after dispatched if dispatched by nationally recognized overnight delivery service, or (d) on the same day if sent by telecopier (subject to obtaining a confirmation receipt), in any event, addressed to the party's address as follows:

To the Lender:

Martin J Seaman
Manager
Oakland County
1200 N. Telegraph Road
Pontiac, MI 48341

Counsel:

Keith J. Lermينياux
Deputy Corporation Counsel
Department of Corporation Counsel
1200 N. Telegraph Road, Dept. 419
Pontiac, MI 48341-0419

To the Borrower:

Fred Gordon
Brown Road Group, LLC
115 S. Main Street
Suite 300
Royal Oak, MI 48067

Counsel:

Paul F. Bohn
Fausone, Taylor & Bohn, LLP
41820 W. Six Mile Road, Suite 103
Northville, MI 48167

Either party may, upon prior notice of seven (7) calendar days, change its

address for all subsequent notices.

8.04 Attorney's Fees. Borrower will reimburse Lender for all costs, expenses and reasonable attorneys' fees expended or incurred by Lender in enforcing this Agreement, in actions for declaratory relief in any way related to this Agreement, or in collecting any sum which becomes due the Lender on the Promissory Note.

8.05 Exhibits. All exhibits mentioned herein shall be deemed incorporated herein by reference as though fully set forth herein.

8.06 Relationship. The relationship of Lender and Borrower is that of lender and borrower. No party hereto intends to create any other relationship hereby, and the parties disavow and negate any intention to create a partnership or joint venture hereby.

8.07 Entire Agreement. The terms and conditions of this Agreement, all exhibits attached hereto and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement shall supersede any prior loan agreements, oral or written, regarding the subject matter of this Agreement between Lender and Borrower. This Agreement may not be amended or modified without the written consent of the parties hereto.

8.08 Inconsistency. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated by reference, the terms and conditions of this Agreement shall control except where federal statutes or regulations are controlling.

8.09 Severability. If any part of this Agreement is determined to be illegal or unenforceable, all other parts shall be given effect separately and shall be in effect.

8.10 Governing Law. The Loan Documents shall be construed in accordance with and governed by the laws of the State of Michigan except where superceded by federal statutes or regulations.

EXECUTION

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date first above written.

WITNESSES:

FOR THE BORROWER:

BROWN ROAD GROUP, LLC

By:

**FRED GORDON
MANAGER**

Dated:

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

This document was acknowledged before me on _____

Notary Public, Oakland County, MI
My Commission Expires: _____

EXECUTION

WITNESSES

FOR THE LENDER:

OAKLAND COUNTY

INITIATIVE

By:

**THOMAS LAW
CHAIRMAN**

Dated:

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

This document was acknowledged before me on _____
by on behalf of the Oakland County.

Notary Public, Oakland, MI

My Commission Expires: _____

**BROWNFIELDS CLEANUP REVOLVING LOAN FUND
LOAN AGREEMENT
BETWEEN**

BROWN ROAD GROUP, LLC

AND

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PROMISSORY NOTE

BROWNFIELD CLEANUP REVOLVING LOAN FUND PROMISSORY NOTE

\$700,000
2003

November 1,

Pontiac, Michigan

November 1, 2003

FOR VALUE RECEIVED the undersigned, **BROWN ROAD GROUP, LLC**, (the "Borrower"), hereby promises to pay to the order of, **OAKLAND COUNTY**, (the "Lender") the principal sum of **SEVEN HUNDRED THOUSAND (\$700,000) DOLLARS** (hereinafter referred to as the "Loan Obligation") and interest on the Loan Obligation in the manner and on the dates indicated in this Promissory Note. The amount of interest payable shall be calculated on the outstanding principal balance at an interest rate of the prevailing six-month Treasury Bill rate and that such rates shall be computed quarterly. **[KL please provide alternative language – the language should be in the approved OCBRA BRF Plan for the Orion Twp. Portion of the site – if not pls advise .]**

In the event that the principal amount of this Note is not repaid in full upon maturity, or in the event that the Borrower does not make timely payments on the payment dates indicated herein, then interest shall be charged at the rate of **TEN (10 %)** per year from the date of the default of payment until such payments are made or until the indebtedness evidenced by this Note is repaid in full.

Lender shall send to Borrower monthly statements indicating the interest and principal, if any, due. Said statements shall be mailed to Borrower at least twenty-one (21) days before the due date of the payment.

The Loan Obligation shall be payable at the offices of the Borrower located at **1200 N TELEGRAPH ROAD, PONTIAC, MICHIGAN 48341** or at such other place as may be designated by the Lender from time to time, in accordance with the following conditions.

This Note evidences a loan to the Borrower from the Lender under the Brownfield's Cleanup Revolving Loan Fund ("BCRLF") Program of the U. S. Environmental Protection Agency for the exclusive purpose of carrying out a removal action to address the hazardous substances identified on the Property

located in Exhibit A, of the Loan Agreement.

This Note is subject to the terms and conditions the Brownfield's Cleanup Revolving Loan Fund Agreement (the "Agreement") and the Loan Guaranty ("Guaranty") all of which are executed concurrently with this Note. Borrower is entitled to the benefits and is subject to the conditions of all three documents. All the terms, conditions and provisions of the Agreement and the Guaranty are, by this reference thereto, incorporated herein as part of this Note, and shall control in the interpretation and enforcement of this Note.

The terms of this note is twenty-four (24) months ("Initial Term"). During the Initial Term, interest only payments shall be due on the fifteenth (15th) day of each month.

If this note is not paid in full by the twenty-fourth (24) month, an administration fee of \$50,000 shall be added to the principal.

If this note is not paid in full within the Initial Term, the interest rate shall adjust to 2% above prime and interest and principal shall be due monthly based on a three (3) year amortization.

Each year after the Initial Term the note remains outstanding, an additional \$25,000 administration fee shall be added to the principal.

This note must be paid in full by the sixtieth (60) month after execution of this note.

In addition to the foregoing, the Borrower hereby promises to pay to the full extent required by the Agreement all costs and expenses of collection incurred in connection with any default by the Borrower hereunder and all other payments required to be made by the Borrower pursuant to the Agreement.

In the event the Borrower should fail to make any of the payments required in this Note, such payments so in default shall continue as an obligation of the Borrower until the amount of default shall have been fully paid.

In case of default in this Note or a default or an "event of default", as defined in the Loan Agreement and the Guaranty the entire principal amount of the Loan Obligation together with any interest as provided for herein, at the option of the holder hereof, may be declared immediately due and payable as provided for in the Agreement and the Guaranty with which this Note is paraphed.

The maker of this Note hereby waives presentation for payment, demand, notice of nonpayment and protest, all pleas of division and discussion, and consents that the time of payment may be extended without notice thereof.

This Note is secured by a Guaranty of even date herewith, executed and

delivered by maker, hereof, the terms and conditions of which said Guaranty are made a part hereof and shall control in the interpretation and enforcement of this Note.

WITNESSES

FOR THE BORROWER:

**BROWN ROAD GROUP, LLC
REDEVELOPMENT AUTHORITY**

By:

Fred Gordon
Manager

Dated:

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

This document was acknowledged before me on _____
by on behalf of the Brown Road Group, LLC.

Notary Public, Oakland County, MI
My Commission Expires: _____

EXHIBIT D

LOAN GUARANTY

EXHIBIT E

MORTGAGE

EXHIBIT F

WORK PLAN

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EXECUTION 14

EXHIBIT A LEGAL DESCRIPTIONS

EXHIBIT B ACTION MEMO

EXHIBIT C PROMISSORY NOTE

EXHIBIT D LOAN GUARANTY

Exhibit E MORTGAGE

EXHIBIT F WORK PLAN

THIS LOAN AGREEMENT (this "Agreement") is entered into as of the ____ day of February, 2004, by and between the **BROWN ROAD GROUP, LLC** ("BORROWER"), a Michigan limited liability company with its principal office at 115 South Main Street, Suite 300, Royal Oak, Michigan, and **OAKLAND COUNTY**, a Michigan county, organized and existing pursuant to Act 139, Public Acts of Michigan, 1974, whose principal address is 1200 N. Telegraph Road, Pontiac, Michigan 48341 ("LENDER").

RECITALS

Borrower is a Michigan limited liability company and the fee owner of 143 acres of certain real property located in the City of Auburn Hills and Township of Orion in Oakland County, Michigan (the "Property"). The Property is legally described in Exhibit A attached.

The Borrower, has and continues to engage in removal actions on the real property owned by the Borrower, which is generally described in Exhibit B (the "Action Memo").

In order to induce Lender to make a loan, Borrower has executed concurrently herewith a promissory note in the form of Exhibit C attached hereto (the "Promissory Note") a mortgage securing payment of the note in the form of Exhibit E ("Mortgage"), and an obligation to repay the Loan Funds by execution of a Loan Guaranty ("Guaranty"), attached hereto and made a part hereof as Exhibit D. The Promissory Note, the Mortgage and the Guaranty are collectively referred to herein as the "Loan Documents."

Lender is a recipient of the United States Environmental Protection Agency Brownfields Cleanup Revolving Loan Funds (the "Funds") and is authorized to make certain loans therefrom.

The Property has been identified by the Oakland County Brownfield Redevelopment Authority ("OCBRA") as a Brownfield Site in need of environmental removal actions. The OCBRA included the Property in a brownfield plan adopted pursuant to the Brownfield Redevelopment Financing Act, Michigan Public Act 381 of 1996, as amended.

Borrower will comply with the requirement of Public Act 451 Part 201 of the Michigan Public Acts of 1994 as amended.

Borrower wishes to borrow from Lender, and Lender is willing to lend to Borrower the amount set forth in the Promissory Note on the terms and conditions contained herein.

NOW THEREFORE, Lender and Borrower, intending to be legally bound, agree as follows:

ARTICLE I LOAN

1.01 Loan. Lender agrees to make a loan in the amount of Seven Hundred Thousand (\$700,000) Dollars (the "Loan"), contingent on satisfaction of the conditions precedent herein. Prior to disbursement of the Loan, and subsequent to the execution of the Action Memo, Borrower shall provide Lender with evidence of Borrower's obligation to repay the Loan Funds by execution of a Promissory Note, a Mortgage and a Loan Guaranty, which are attached hereto and made a part hereof. The Promissory Note, Mortgage and the Loan Guaranty shall contain specific terms for the repayment of the Loan Funds by the fifth anniversary of the date of execution of the Promissory Note.

1.02 Promissory Note. The obligation of the Borrower to repay the Loan shall be evidenced by the Promissory Note, all terms of which are incorporated herein by reference. The Promissory Note shall mature on the fifth anniversary of the date of execution of the Promissory Note. Upon maturing, any remaining balance owed Lender shall be due and payable. Principal, interest, and late payments, if any, on the Loan are payable in accordance with the terms of the Loan Documents.

1.03 Prepayment Prior to Maturity. Borrower may, without premium, prepay any portion of the principal on the Loan prior to maturity.

1.04 Purpose. Borrower shall only use the proceeds of the Loan for activities in the approved removal actions at the Property (the "Work") as set forth in the Work Plan, as the same may be amended, supplemented or replaced

from time to time as approved by the Lender, and as determined by the Lender. The Work consists primarily of a leachate and methane gas collection system on the Property as described in the Work Plan attached as Exhibit F. No Work shall be commenced for which the proceeds of this Loan will be utilized unless and until the Action Memo attached hereto as Exhibit B has been reviewed and approved by Lender, and executed by all parties to this Agreement. Nothing in this Agreement shall be construed to require or compel Lender to approve the Action Memo. No interest shall accrue on this Loan unless and until Lender approves the aforementioned Action Memo and the funds are dispersed.

1.05 Contractor Qualifications and Insurance. Borrower affirms that its principal environmental consultant Fishbeck, Thompson, Carr & Huber (the "Contractor") has examined the Property, is fully familiar with local conditions, and is able to execute the Work. The Contractor shall carry out the Work consistent with the level of care and skill exercised by similar contractors performing comparable services under comparable circumstances. The Contractor shall possess the appropriate license from the Contractor's state licensing board. The Contractor shall maintain and keep in full force and effect the following insurance: errors and omissions, contractor's pollution and general liability insurance with a minimum of \$1,000,000 coverage per accident or claim, property insurance, and workman's compensation insurance.

1.06 Transaction Fees. Lender may, at its option, charge transaction fees in an amount not to exceed One Thousand (\$1,000) Dollars for document preparation and recording and all other services related to this Loan Agreement.

1.07 Loan Collection Services. After 24 months, Lender may, at its option, charge a fee for loan collection services in an amount not to exceed Two Hundred (\$200) Dollars per payment.

1.08 Default. Upon default arising from provisions of Article V, Borrower promises to pay to Lender all collection and attorney's fees and expenses actually incurred by Lender, whether or not litigation is commenced, including, without limitation, penalties and/or fees due under this Agreement.

1.09 Security. As security for Borrower's indebtedness to Lender, Borrower shall give Lender a second Mortgage on the Property and a Loan Guaranty. Borrower acknowledges that a Cooperative Agreement with the U.S. Environmental Protection Agency is the source of all funds loaned hereunder and that the Lender is under no obligation to loan and will not be required to loan any of its own funds.

1.10 Inspection and Right to Stop Work. Lender shall have the right, but not the obligation, to enter the Property and inspect the Work during its course and within thirty (30) days following completion of the Work. Borrower shall provide notice to Lender at least ten (10) business days prior to completion of the Work. Lender shall select a Site Manager. The Site Manager will review and inspect the Work in coordination with the Borrower's Project Coordinator.

Lender may stop the Work if it is not satisfactory or not substantially in accordance with the plans and order work replacement at Borrower's expense. Lender shall have the right, but not the obligation, to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Agreement upon written notice of at least thirty (30) days to Borrower and an opportunity to cure. The notice shall include a clear description of the proposed cure and the approximate cost of the same. Borrower recognizes that the Site Manager has the ability to stop Work immediately in the event of an imminent and substantial threat to human health or the environment. Lender's actions under this subsection shall not be deemed to create any ownership or operator status as that term is defined under the environmental laws set forth in Section 4.07 of this Agreement; and, furthermore, Lender shall be deemed to be a "response activity contractor" under Part 201 of Public Act 451 of the Michigan Public Acts of 1994, as amended, for any actions it does take under this subsection.

1.11 Loan Proceeds. Loan proceeds will be made available only after the Action Memo is executed by all the parties hereto and shall only be used to fund Borrower's Work performed after the effective date of the Action Memo. Once the Action Memo is properly executed loan proceeds shall be disbursed in its entirety upon Borrowers request.

1.12 Adherence to Project Budget and Schedule. The Work Plan shall include a Project Schedule and Project Budget, which shall be reviewed and approved by Lender. Borrower agrees to keep all expenditures from proceeds of the Loan within the approved Project Budget, and to complete the work within the Project Schedule. Borrower agrees to obtain Site Manager's and Lender's prior approval of any substantive changes in the Work, the Project Budget, or the Project Schedule. Such approval(s) shall not be unreasonably withheld or delayed.

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.01 Environmental Warranties. Borrower represents and warrants that:

- A The Property is not listed or proposed for listing on the National Priorities List of the U.S. Environmental Protection Agency.
- B Borrower did not generate or transport hazardous substances, pollutants or contaminants at or to the Property.
- C Borrower acquired the Property after the disposal or placement of hazardous substances, pollutants and contaminants on the Property and has not caused, contributed to, permitted or exacerbated the release of such substances, pollutants or

contaminants on or from the Property. Borrower is not otherwise a responsible person as defined in Michigan Public Act 451, Part 201 of the Michigan Public Acts of 1994.

D Borrower is not aware of any environmental contamination at the property other than that reflected in the following documents (the "Project Documents") that have been supplied by Borrower to Lender for Lender's review:

1. Bald Mountain Land Preserve, Oakland County, Michigan Proposed Landfill and Remediation Plan (cir. 1980).
2. Soil Testing Services, Inc. Construction Specifications and Operating Procedures Sanicem Landfill (March 1982).
3. EPA Hazardous Site Evaluation Division, Field Investigation Team Zone II, Draft Screening Site (September 1990).
4. Hydrogeological Investigation, Sanicem Landfill, Oakland County (January 1994)
5. Risk Assessment Report, Volume I, Human Health Risk Assessment, Sanicem Landfill (June 1995).
6. Scope of Work Summary Sanicem Landfill Site (October 1995).
7. Removal Investigation Report, Sanicem Landfill, Oakland County, Michigan (November 1995).
8. Risk Assessment Technical Memorandum, Sanicem Landfill, Oakland County, Michigan (November 1995).
9. Additional Removal Investigation Activities at the Sanicem Landfill Site (October 17, 1996).
10. Analytical Reports for Sanicem Landfill, Oakland County, Michigan (June 2000).
11. Preliminary Geotechnical Evaluation Report, J. Fons Property, Lapeer and Bald Mountain Roads – Auburn Hills, Michigan (October 2000).
12. Part 201, Act 451, Baseline Environmental Assessment of Former Sanicem Landfill (May 21, 2002).
13. Revised Act 381 Work Plan to Conduct Eligible MDEQ response Activities for the Former Sanicem Landfill City of

Auburn Hills (August 29, 2002)

14. Revised Act 381 Work Plan to Conduct Eligible MDEQ Response Activities for the Former Sanicem Landfill Orion Township (August 29, 2002).
15. Interim Report of Findings of Methane Investigation and Remediation of the Former Sanicem Landfill (October 9, 2003)
16. Letter from Ben Matthews, MDEQ regarding site conditions dated October 20, 2003.

2.02 Legal Status. Borrower is a Michigan limited liability company validly existing under the laws of the State of Michigan.

2.03 Interest in Property. The Borrower represents and warrants that it is the fee owner of the Property, and that it will remain the fee owner until the completion of the Work.

2.04 No Violation. The making and performance by Borrower of this Agreement does not violate any provision of federal, state or local law, or result in a breach of or constitute a default under any agreement, indenture or other instrument to which Borrower is a party or by which Borrower may be bound.

2.05 Authorization. This Agreement, the Promissory Note, the Mortgage and the Loan Guaranty have been duly authorized, executed and delivered and are valid and binding agreements of Borrower.

2.06 Litigation. Presently, there are no pending or threatened actions or proceedings before any court or administrative agency against the Borrower or the Property.

2.07 Correctness of Financial Statement. Borrower represents and warrants that it will present financial statements to the Lender, upon written request, that are the full and complete financials presented to Borrower's principal financial lender on this Project.

2.08 Survival. The above-listed representations and warranties shall survive the execution of this Agreement.

ARTICLE III CONDITIONS PRECEDENT

3.01 The obligation of Lender to make the Loan contemplated hereunder is subject to the fulfillment of the following conditions:

- A. **Approval of Lender's Counsel.** All legal matters incidental to Lender's commitment to issue the Loan hereunder shall be satisfactory to Lender's counsel, including the form, validity and enforceability of this Agreement and Exhibits C (Promissory Note), D (Guaranty) and E (Mortgage).
- B. **Compliance.** The representations and warranties contained herein shall be true on and as of the date of the signing of this Agreement with the same effect as though such representations and warranties had been made on and as of such date, and on such date no Event of Default as defined in Article V herein, and no condition, event or act which, with the giving of notice or the lapse of time or both, would constitute an Event of Default shall have occurred and be continuing or shall exist.
- C. **Identification of Contractors.** Borrower shall submit within fifteen (15) days after execution of the Action Memo to Lender a list identifying all of Borrower's contractors and subcontractors for the Work.
- D. **Cooperation With Audit and Public Participation Requirements.** Borrower agrees to cooperate fully with an audit of the Loan and the Work, if an audit is performed. Borrower shall also cooperate with and assist Lender in responding to and/or addressing any significant comments received on the Work Plan or Action Memo when they are published for public comment.
- E. **Erect Sign.** Borrower agrees to erect a sign on the Property, approved by Lender, stating that the Work is being financed in part by U.S. EPA BCRLF Funds and the Lender.
- E. **Issuance of Action Memo.** Lender shall be under no obligation to advance the loan proceeds unless and until the Action Memo is fully executed by all the parties hereto.

ARTICLE IV AFFIRMATIVE COVENANTS

4.01 Covenants. Borrower covenants to do the following items indicated in this Article for so long as amounts remain due under the Promissory Note.

4.02 Punctual Payment. Borrower shall punctually pay the principal of and any interest on the Promissory Note at the times and place and in the manner specified in the Promissory Note.

4.03 Accounting Records. Borrower shall document all the uses of the

proceeds of the Loan, and maintain adequate books and accounts in accordance with generally accepted accounting principals consistently applied. Borrower shall permit any representative of Lender at any reasonable time to inspect, audit and examine such books. Borrower shall maintain documentation on the use of the proceeds of the Loan for ten years after completion of removal actions supported by loan or until the resolution of any litigation, claim, negotiations, audit, cost recovery or other action involving the documents, whichever is longer and shall obtain approval of Lender prior to destroying such documentation.

4.04 Annual and Monthly Reports. The Borrower shall furnish annual reports that document that it is in material compliance with all relevant federal and state environmental regulations during the life of the loan. Once the Action Memo is fully executed, the Borrower shall also provide to Lender's Site Manager monthly status reports on the first day of each month, which provide the following information: a) the Work done in the last thirty (30) days; b) the Work to be performed in the next thirty (30) days; c) any substantive concerns encountered in the performance of the Work or in adherence to the Project Schedule or Project Budget; and d) proposed solutions for concerns encountered.

4.05 Annual Financial Reports. Borrower shall furnish annual financial statements, including basic accounting and control mechanisms to track legitimate use of the proceeds of the Loan and document that such proceeds are put to authorized uses. Borrower's accounting system must track site-specific costs, cost activity and operable unit (if applicable). Financial statements include: (a) income statements; (b) balance sheets; and (c) cash flow statements.

4.06 Other Documentation. Borrower shall furnish such other information as Lender may from time to time reasonably request.

4.07 Compliance With All Laws. Borrower shall carry out the Work in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.) ("CERCLA"); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments, 40 C.F.R. Part 31; Cooperative Agreements for Superfund Response Actions, 40 C.F.R. Part 35, Subpart O; the National Oil and Hazardous Substances Contingency Plan ("NCP"), and 40 C.F.R. Part 300. Any and all terms in this document, which are defined in CERCLA and/or NCP, shall have the same meaning in this Agreement as in CERCLA and/or NCP.

4.08 Compliance With Executive Order 11246. Borrower shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. 60-4 relating to federally-assisted construction contracts.

4.09 Davis Bacon Act. Borrower shall carry out the Work in accordance with the Davis-Bacon Act of 1931 (CERCLA § 104(g)(1), 40 U.S.C. §§276a to 267a-5 and 42 U.S.C. § 3222 as set forth in CERCLA § 104(6)). Compliance with the Davis-Bacon Act requires payment of federal prevailing

wage rates for construction, repair or alteration work funded in whole or in part with loan funds. Borrower must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.

4.10 Insurance. In addition to Contractor's insurance requirements, Borrower shall maintain and keep in full force and effect insurance of the types and amounts necessary to protect the security for Borrower's indebtedness to the Lender, including without limitation, commercial general liability insurance with a minimum of \$1,000,000 coverage per accident or claim, property insurance and workman's compensation insurance (if applicable), and fire insurance for the value of the property. Insurance coverage shall be primary in relation to any other insurance or self-insurance available to the Lender. Insurance shall be placed with an insurer with an A.M. Best's Rating of no less than A:VII. The Lender shall be named Additional Insureds. Borrower shall deliver to Lender from time to time at Lender's request certificates of insurance or policies setting forth all business insurance then in effect. Policies shall be endorsed to provide that the Lender shall be provided with written notice of thirty (30) days for any cancellation, suspension or reduction in limits.

4.11 Taxes and Other Liabilities. Borrower shall pay and discharge when due any and all indebted obligations, assessments, taxes (real and personal), including federal and state payroll and income taxes, except such as Borrower may in good faith contest or as to which a bona fide dispute may arise; provided provision is made to the satisfaction of Lender for eventual payment thereof in the event that it is found that the same is an obligation of Borrower.

4.12 Litigation. Borrower shall promptly give notice in writing to Lender of any litigation pending or threatened against Borrower or the Property.

4.13 Non Discrimination and Equal Opportunity. Borrower agrees to comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, Borrower shall undertake good faith efforts in compliance with 40 C.F.R. § 35.6580 to give opportunities to qualified Small Business Enterprises ("SBE"), Minority Business Enterprises ("MBE") and Women-Owned Business Enterprises ("WBE") to submit proposals and bids and provide services on contracts and subcontracts for services and supplies. Borrower shall submit a report of such efforts in a manner acceptable to the Lender.

4.14 Debarment and Suspension. Borrower certifies that Borrower and, to its knowledge, Contractor:

- A are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state or local (hereinafter "public") transactions;
- B have not within a three year period preceding this Agreement been

convicted of or had a civil judgment rendered against them for (i) fraud or commission of a criminal offence in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction, (ii) violation of federal or state antitrust laws, or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

- C are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under Section 4.12 (b) hereof; and
- D have not within the preceding three years had a public transaction terminated for cause or default.

4.15 Environmental Compliance. Borrower certifies that it is not now, and has not in the past, been subject to any penalties resulting from environmental non-compliance at the Property. Borrower further certifies that it will conduct removal actions in accordance with Michigan Public Act 451, Part 201 of the Michigan Public Acts of 1994, and will modify the removal actions for which the proceeds of this Loan are utilized, as required by the Lender based on unforeseen site conditions or public involvement requirements.

4.16 Notice to Change in the Work. Borrower shall immediately report to Lender in writing any potential changes to the Work described in Section 1.04 hereof and the discovery of hazardous substances, pollutants or contaminants not identified in the Work or Project Documents. The Site Manager and Lender shall approve all changes or modifications to the Work or related documents prior to such change or modification becoming effective.

4.17 Completion of Project. Borrower agrees to complete the Work within the Project Schedule. Not later than thirty (30) days after construction activities are complete, Borrower shall notify Lender that the Work is complete. The notice shall contain a certification and documentation necessary to establish the following:

- A. The Work was conducted in accordance with the Work Plan, the Action Memo and the Loan Document. Borrower shall promptly supply supplemental information as needed by the Lender.
- B. All proceeds of the Loan were expended for eligible project costs.
- C. That the Work, as implemented, is protective of human health and the environment.

ARTICLE V EVENTS OF DEFAULT

5.01 Default. The following shall constitute Events of Default:

- A Default by Borrower in any payment when due of principal or interest under the Promissory Note, which default is not cured within thirty (30) days of receipt of a notice of default.
- B Any representation or warranty made by Borrower hereunder or in the Loan Documents proves false or misleading in any material respect.
- C Use of the proceeds of the Loan for purposes other than those stated in Section 1.4 or approved in writing by Lender.
- D Default by Borrower in the performance of any other term, covenant or agreement contained herein, or in the Loan Documents, which default is not cured within thirty (30) days of receipt of a notice of default (or such longer period as shall be reasonably necessary to cure such default provided Borrower promptly commences such cure and thereafter diligently pursues such cure to completion).
- E Default by Borrower under the terms of any agreement or instrument pursuant to which Borrower has borrowed money from any person or entity for the Property, which default is not cured within thirty (30) days of receipt of a notice of default (or such longer period as shall be reasonably necessary to cure such default provided Borrower promptly commences such cure and thereafter diligently pursues such cure to completion).
- F Failure of Borrower to satisfy any judgment or remove any levy or other process against the assets of Borrower within thirty (30) days after the entry or levy thereof, or at least five (5) days prior to the time of any proposed sale under any such judgment or levy.
- G The breach by guarantor of any of the financial covenants in the Loan Guaranty, which breach is not cured within thirty (30) days of receipt of a notice of default.

5.02 Acceleration. Notwithstanding anything to the contrary in the Promissory Note, upon an Event of Default, any indebtedness of Borrower under this Agreement and the Promissory Note shall, at Lender's option and without notice, become immediately due and payable without presentment, notice or demand, all of which are hereby expressly waived by Borrower, and the obligations, if any, of Lender to permit further borrowing hereunder shall immediately cease and terminate.

5.03 Secure Site. In the event of default, Borrower shall secure the site. The cost of securing the site is the responsibility of the Borrower. If

Borrower fails to secure the site within 24 hours, Lender may, but shall not be obligated to, do so at the Borrower's sole cost.

ARTICLE VI REMEDIES OF LENDER

6.01 Event of Default. Upon the occurrence of an Event of Default, Lender may exercise, singly or in combination, any or all of the rights, powers and privileges provided in this Article VI and all other remedies available to the Lender under the Loan Documents, at law or in equity, at any time and from time to time. Such exercise shall not constitute a waiver of any of Lender's rights or remedies thereunder, whether or not the indebtedness evidenced by the Promissory Note shall be due and payable and whether or not Lender shall have instituted any actions for the enforcement of its rights under the Promissory Note. Failure of Lender to exercise any rights or remedies at any time shall not constitute a waiver of any of its rights or remedies. Lender may exercise any and all of the rights, powers, privileges and remedies provided in the Loan Documents.

6.02 TIF Recapture. In the event of a default under Article V, Lender shall have the right as allowed by law to retain and subordinate to the security previously given to Huntington Bank, or require that the local taxing jurisdictions retain, any Combined County taxes that would otherwise be used to reimburse Lender for eligible costs pursuant to any approved Brownfield plan for the Sanicem Site (including the portions located in Orion Township and Auburn Hills), and such right shall continue until the loan (principal and interest) is paid in full. Borrower agrees to execute any and all documents that Lender might reasonably require to implement this provision. As allowed by law, any amounts so retained shall be forwarded to the Oakland County Treasurer and shall be set off against the outstanding principal and interest on the Loan.

ARTICLE VII INDEMNIFICATION

7.01 The Borrower shall, at Borrower's expense, defend, indemnify, and otherwise hold Lender, its officers, employees and agents harmless against any and all claims, demands, losses, expenses, damages (general, punitive or otherwise) and causes of action (whether legal or equitable in nature) asserted by any person, firm, corporation, or other entity and arising out of or caused by Borrower's actions or inactions with regard to the Property, or by the use of the proceeds of the Loan. Borrower shall pay Lender upon demand all claims, judgments, damages, lawsuits or expenses (including legal expenses) incurred by Lender as a result of any legal action arising out of or caused by any of the Loan Documents, or by the use of the proceeds of the Loan.

ARTICLE VIII MISCELLANEOUS

8.01 Waiver. No delay or failure of Lender, or any holder of the Promissory Note exercising any right, power or privilege hereunder or in the Loan Documents shall affect such right, power or privilege; nor shall any single

or partial exercise thereof or any abandonment or discontinuance of steps to enforce such a right, power or privilege affect such right, power or privilege. The rights and remedies of Lender hereunder are cumulative and not exclusive. Any waiver, permit, consent or approval of any kind by Lender, or any holder of the Promissory Note, of any breach or default hereunder, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing.

8.02 Successors. This Agreement shall be binding upon the permitted assigns or successors of Borrower and Lender. This Agreement shall not be assigned or transferred by Borrower without the written consent of Lender and any purported assignment or transfer without such prior written consent shall be void.

8.03 Notices. Any notice, consent, waiver, request or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed given (a) on the same day if delivered personally, (b) three business days after mailed if delivered by certified or registered mail, return receipt requested, postage prepaid, (c) one business day after dispatched if dispatched by nationally recognized overnight delivery service, or (d) on the same day if sent by telecopier (subject to obtaining a confirmation receipt), in any event, addressed to the party's address as follows:

To the Lender:

Martin J Seaman
Manager
Oakland County
1200 N. Telegraph Road
Pontiac, MI 48341

Counsel:

Keith J. Lermينياux
Deputy Corporation Counsel
Department of Corporation Counsel
1200 N. Telegraph Road, Dept. 419
Pontiac, MI 48341-0419

To the Borrower:

Fred Gordon
Brown Road Group, LLC
115 S. Main Street
Suite 300

Royal Oak, MI 48067

Counsel:

Paul F. Bohn

Fausone, Taylor & Bohn, LLP

41820.W. Six Mile Road, Suite 103

Northville, MI 48167

Either party may, upon prior notice of seven (7) calendar days, change its address for all subsequent notices.

8.04 Attorney's Fees. Borrower will reimburse Lender for all costs, expenses and reasonable attorneys' fees expended or incurred by Lender in enforcing this Agreement, in actions for declaratory relief in any way related to this Agreement, or in collecting any sum which becomes due the Lender on the Promissory Note.

8.05 Exhibits. All exhibits mentioned herein shall be deemed incorporated herein by reference as though fully set forth herein.

8.06 Relationship. The relationship of Lender and Borrower is that of lender and borrower. No party hereto intends to create any other relationship hereby, and the parties disavow and negate any intention to create a partnership or joint venture hereby.

8.07 Entire Agreement. The terms and conditions of this Agreement, all exhibits attached hereto and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement shall supersede any prior loan agreements, oral or written, regarding the subject matter of this Agreement between Lender and Borrower. This Agreement may not be amended or modified without the written consent of the parties hereto.

8.08 Inconsistency. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated by reference, the terms and conditions of this Agreement shall control except where federal statutes or regulations are controlling.

8.09 Severability. If any part of this Agreement is determined to be illegal or unenforceable, all other parts shall be given effect separately and shall be in effect.

8.10 Governing Law. The Loan Documents shall be construed in accordance with and governed by the laws of the State of Michigan except where superceded by federal statutes or regulations.

EXECUTION

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date first above written.

WITNESSES:

FOR THE BORROWER:

BROWN ROAD GROUP, LLC

By:

**FRED GORDON
MANAGER**

Dated:

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

This document was acknowledged before me on _____

Notary Public, Oakland County, MI
My Commission Expires: _____

EXECUTION

WITNESSES

INITIATIVE

FOR THE LENDER:

OAKLAND COUNTY

By:

**THOMAS LAW
CHAIRMAN**

Dated:

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

This document was acknowledged before me on _____
by on behalf of the Oakland County.

Notary Public, Oakland, MI
My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTIONS

LEGAL DESCRIPTION

Township of Orion

PARCEL IDENTIFICATION NO. 09-35-400-013:

PART OF THE SOUTHEAST ¼ OF SECTION 35, TOWN 4 NORTH, RANG 10 EAST, ORION TOWNSHIP, OAKLAND COUNTY, MICHIGAN DESCRIBED AS: BEGINNING AT A POINT DISTANT SOUTH 87° -52' - 50" WEST [S 89° -00'-16" W, MEASURED], 300.00 FEET FROM THE SOUTHEAST SECTION CORNER; THENCE NORTH 02° -07'-10" WEST [N 00° -59'-41" W, MEASURED], 359.82 FEET; THENCE ALONG A CURVE TO RIGHT, RADIUS 360.00, CHORD BEARS NORTH 39°-3'-10-" WEST [N 38° -22'-41" W, MEASURED], 96.67 FEET, DISTANCE OF 96.96 FEET; THENCE NORTH 31° -47'-11" WEST [N 30°-39'-42" W, MEASURED], 183.24 FEET; THENCE ALONG A CURVE TO THE LEFT, RADIUS 340.00, CHORD BEARS NORTH 62°-03'-04" WEST [N 62°-55'-35" W, MEASURED], 342.72 FEET, DISTANT OF 359.19 FEET; THENCE SOUTH 87°-41'-04" WEST [88°-48'-33" W, MEASURED], 1554.35 FEET; THENCE SOUTH 03°-08'-46" EAST [S 03°-08'-46" E, MEASURED], 101.13 FEET; THENCE SOUTH 11°-29'-07" WEST [S 12°-36'36" W, MEASURED], 283.66 FEET; THENCE SOUTH 87°-41'-04" WEST [S 88°-48'-33" W, MEASURED], 209.21 FEET; THENCE 01°-24'-26" EAST [S 00°-16'-57" E, MEASURED], 384.78 FEET; THENCE NORTH 87°-52'-50" EAST [N 89°-00'-21" E], 2279.23 FEET TO THE POINT OF BEGINNING.

Legal Description

Brown Road Group Property - Auburn Hills

PART OF THE NORTHEAST FRACTIONAL $\frac{1}{4}$ OF SECTION 2, TOWN 3 NORTH, RANGE 10 EAST, CITY OF AUBURN HILLS, OAKLAND COUNTY, MICHIGAN, AND PART OF THE SOUTHEAST FRACTIONAL $\frac{1}{4}$ OF SECTION 35, TOWN 4 NORTH, RANGE 10 EAST, ORION TOWNSHIP, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF SECTION 2; THENCE S. $01^{\circ}-16'-34''$ E, 1953.02 FEET; THENCE S $88^{\circ}-43'-56''$ W, 544.50 FEET; S $01^{\circ}-16'-34''$ E, 400.00 FEET; THENCE S $88^{\circ}-43'-56''$ W, 808.07 FEET; THENCE N $00^{\circ}-56'-51''$ W, 788.36 FEET; THENCE N $86^{\circ}-22'-22''$ W 1234.73 FEET; THENCE S $03^{\circ}-44'-14''$ W, 10.57 FEET; THENCE S $88^{\circ}-15'-55''$ W, 32.03 FEET TO A POINT ON THE EASTERLY LINE OF LAPEER ROAD NORTH 1498.72 FEET AND EAST 83.89 FEET FROM CENTER OF SECTION CORNER OF SECTION 2; THENCE, N $00^{\circ}-32'-55''$ E, 298.60 FEET; THENCE, N $00^{\circ}-09'-05''$ W, 406.63 FEET; THENCE N $00^{\circ}-53'-05''$ W, 400.00 FEET; THENCE S $89^{\circ}-22'-55''$ W, 91.42 FEET TO A POINT ON THE CENTER OF SECTION 2; THENCE N $00^{\circ}-37'-05''$ W, 376.90 FEET ALONG THE CENTER OF SECTION 2 TO THE NORTH $\frac{1}{4}$ CORNER OF SECTION 2; THENCE N $89^{\circ}-00'-21''$ E, 98.87 FEET TO A POINT DISTANT N $89^{\circ}-00'-21''$ E, 33.27 FEET FROM THE SOUTH $\frac{1}{4}$ CORNER OF SECTION 35; THENCE N $00^{\circ}-16'-57''$ W, 384.78 FEET; THENCE N $88^{\circ}-48'-33''$ E, 209.21 FEET; THENCE N $12^{\circ}-36'-36''$ E, 283.66 FEET; THENCE N $02^{\circ}-01'-17''$ W, 101.13 FEET; THENCE N $88^{\circ}-48'-33''$ E, 1554.35 FEET; THENCE ALONG A CURVE TO THE RIGHT, RADIUS 340.00 FEET, CHORD BEARS S $60^{\circ}-55'-35''$ E, 342.72 FEET, DISTANCE OF 359.19 FEET; THENCE S $30^{\circ}-39'-42''$ E, 183.24 FEET; THENCE ALONG A CURVE TO THE LEFT, RADIUS 360.00 FEET, CHORD BEARS S $38^{\circ}-22'-41''$ E, 96.67 FEET, DISTANCE OF 96.96 FEET; THENCE S $00^{\circ}-59'-41''$ E, 359.82 FEET TO A POINT ON THE SOUTH LINE OF SECTION 35; THENCE N $89^{\circ}-00'-21''$ E, 300.00 FEET ALONG THE SOUTH LINE OF SECTION 35 TO THE POINT OF BEGINNING.

EXHIBIT B

ACTION MEMO

NOTE: Action Memo to be completed upon further environmental investigation and subject to US EPA and Oakland County approval as described in Section 1.01, 1.04, 1.09 & 1.11. No loan proceeds will be disbursed until the Action Memo is complete and approved by all parties.

EXHIBIT C

PROMISSORY NOTE

NOTE: Promissory Note to be executed prior to loan proceeds disbursement and after completion of Action Memo as described in Sections 1.01, 1.04, 1.09 & 1.11.

BROWNFIELD CLEANUP REVOLVING LOAN FUND PROMISSORY NOTE

\$700,000
___, 2004

February

Pontiac, Michigan

FOR VALUE RECEIVED the undersigned, **BROWN ROAD GROUP, LLC**, (the "Borrower"), hereby promises to pay to the order of, **OAKLAND COUNTY**, (the "Lender") the principal sum of **SEVEN HUNDRED THOUSAND (\$700,000) DOLLARS** (hereinafter referred to as the "Loan Obligation") and interest on the Loan Obligation in the manner and on the dates indicated in this Promissory Note. The amount of interest payable for the initial term shall be calculated on the outstanding principal balance at an interest rate of the prevailing six-month Treasury Bill rate and that such rates shall be computed quarterly.

In the event that the principal amount of this Note is not repaid in full upon maturity, or in the event that the Borrower does not make timely payments on the payment dates indicated herein, then interest shall be charged at the rate of **TEN (10 %)** per year from the date of the default of payment until such payments are made or until the indebtedness evidenced by this Note is repaid in full.

Lender shall send to Borrower monthly statements indicating the interest and principal, if any, due. Said statements shall be mailed to Borrower at least twenty-one (21) days before the due date of the payment.

The Loan Obligation shall be payable at the offices of the Borrower located at **1200 N TELEGRAPH ROAD, PONTIAC, MICHIGAN 48341** or at such other place as may be designated by the Lender from time to time, in accordance with the following conditions.

This Note evidences a loan to the Borrower from the Lender under the

Brownfield's Cleanup Revolving Loan Fund ("BCRLF") Program of the U. S. Environmental Protection Agency for the exclusive purpose of carrying out a removal action to address the hazardous substances identified on the Property located in Exhibit A, of the Loan Agreement.

This Note is subject to the terms and conditions the Brownfield's Cleanup Revolving Loan Fund Agreement (the "Agreement") and the Loan Guaranty ("Guaranty") all of which are executed concurrently with this Note. Borrower is entitled to the benefits and is subject to the conditions of all three documents. All the terms, conditions and provisions of the Agreement and the Guaranty are, by this reference thereto, incorporated herein as part of this Note, and shall control in the interpretation and enforcement of this Note.

The terms of this note is twenty-four (24) months ("Initial Term"). During the Initial Term, interest only payments shall be due on the fifteenth (15th) day of each month.

If this note is not paid in full by the twenty-fourth (24) month, an administration fee of \$50,000 shall be added to the principal.

If this note is not paid in full within the Initial Term, the interest rate shall adjust to 2% above prime and interest and principal shall be due monthly based on a three (3) year amortization.

Each year after the Initial Term the note remains outstanding, an additional \$25,000 administration fee shall be added to the principal.

This note must be paid in full by the sixtieth (60) months after execution of this note.

In addition to the foregoing, the Borrower hereby promises to pay to the full extent required by the Agreement all costs and expenses of collection incurred in connection with any default by the Borrower hereunder and all other payments required to be made by the Borrower pursuant to the Agreement.

In the event the Borrower should fail to make any of the payments required in this Note, such payments so in default shall continue as an obligation of the Borrower until the amount of default shall have been fully paid.

In case of default in this Note or a default or an "event of default", as defined in the Loan Agreement and the Guaranty the entire principal amount of the Loan Obligation together with any interest as provided for herein, at the option of the holder hereof, may be declared immediately due and payable as provided for in the Agreement and the Guaranty with which this Note is paraphed.

The maker of this Note hereby waives presentation for payment, demand, notice of nonpayment and protest, all pleas of division and discussion, and

consents that the time of payment may be extended without notice thereof.

This Note is secured by a Guaranty of even date herewith, executed and delivered by maker, hereof, the terms and conditions of which said Guaranty are made a part hereof and shall control in the interpretation and enforcement of this Note.

WITNESSES

FOR THE BORROWER:

**BROWN ROAD GROUP, LLC
REDEVELOPMENT AUTHORITY**

By:

Fred Gordon
Manager

Dated:

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

This document was acknowledged before me on _____
by on behalf of the Brown Road Group, LLC.

Notary Public, Oakland County, MI
My Commission Expires: _____

EXHIBIT D

LOAN GUARANTY

NOTE: Loan Guaranty to be executed prior to loan proceeds disbursal and after completion of Action Memo as described in Sections 1.01, 1.04, 1.09 & 1.11. Acceptance of Loan Guaranty subject to Oakland County financial review of Guarantors.

LOAN GUARANTY

THIS LOAN GUARANTY ("Guaranty") is executed and delivered by **OSCAR E. STEFANUTTI**, individually, **WILLIAM N. WIDMYER**, individually, **FRED GORDON**, individually, **THE STEFANUTTI FAMILY LIMITED PARTNERSHIP**, a Michigan limited partnership, and **REFCO, INC.**, a Florida corporation, jointly and severally, as of the ____ day of ____, 2004, in favor of **OAKLAND BROWNFIELD INITIATIVE** ("Lender").

RECITALS:

WHEREAS, Brown Road Group, LLC ("Borrower") has requested that Lender enter into a certain Loan Agreement (the "Loan Agreement") of even date herewith, by and between Borrower and Lender, pursuant to which Lender is being requested to lend to Borrower an amount not to exceed \$700,000 (the "Loan") to finance certain costs of remediation on the redevelopment of 146 acres of land that is to be developed into a high tech/light industrial park located in the City of Auburn Hills and the Township of Orion, County of Oakland, State of Michigan (the "Project Site" or the "Project").

WHEREAS, Borrower's obligations to Lender are evidenced by a certain Promissory Note (the "Note") of even date (the Note is sometimes referred as the "Loan Documents").

WHEREAS, Lender is unwilling to enter into the Loan Agreement and to make the Loan unless the Guarantor delivers this Guaranty to Lender.

NOW, THEREFORE, in consideration of the foregoing and in order to induce Lender to enter into the Loan Agreement and to make the Loan to Borrower subject to the terms and conditions of the Loan Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and further acknowledging that Lender intends to rely on the guaranty of the Guarantor hereunder, the Guarantor hereby agrees as follows:

1. **Particular Terms – Definitions.** As used in this Guaranty, the following terms and expressions have the respective meanings indicated opposite each of them.

Guarantor:

Name and Address:

Oscar E. Stefanutti
1455 Kirkway Road
Bloomfield Hills, MI 48302

Name and Address:

William N. Widmyer
2921 Orchard Place
Orchard Lake, MI 48324

Name and Address:

Fred Gordon
473 Newburne Pointe
Bloomfield Hills, MI 48304

Lender:

Name and Address: Oakland Brownfield Initiative
1200 N. Telegraph Road
Pontiac, MI 48341-0409

Borrower:

Name and Address: Brown Road Group, LLC
115 South Main Street, Ste. 300
Royal Oak, MI 48067

Note:

\$700,000 Promissory Note (Loan)
dated of even date herewith, including
any extensions, renewals,
amendments or modifications thereof
(the "Note").

Loan Documents:

As defined in the Note.

**Capitalized Terms not Defined
Herein:**

As defined in the Loan Agreement.

2. **Guaranteed Obligations.** In order to induce Lender to make the loans evidenced by the Note to Borrower, and in consideration thereof and of other good and valuable consideration, the receipt of which is hereby acknowledged, the Guarantor hereby jointly and severally and absolutely and unconditionally guarantees to the lender the full and prompt payment and performance when due, whether by acceleration or otherwise, of the following (hereinafter collectively referred to as the "Guaranteed Obligations"):

(a) Indebtedness in the principal amount of Seven Hundred Thousand and 00/100 Dollars (\$700,000) (the "Loan"), together with all accrued and unpaid interest existing from time to time, owed by Borrower to Lender evidenced by the Note.

(b) The Guaranteed Obligations to be paid and performed by Borrower under the terms of (i) that certain Loan Agreement between Lender and Borrower of even date herewith, including without limitation, the Indebtedness (as defined in the Loan Agreement); and (ii) all other Loan Documents (as defined in the Loan Agreement), as the same area amended, restated or modified from time to time) (the Loan Agreement, the Note and all such other Loan Documents are sometimes collectively referred to herein as the "Loan Documents").

(c) Any extension or renewal (but not increase) of the indebtedness and Guaranteed Obligations set forth in Sections 2(a) and 2(b) above, and all interest and other Guaranteed Obligations due in connection with or on account of such items.

(d) All costs and expenses, including, without limitation, attorneys' fees and court costs at any time paid or incurred by Lender when (i)

and which are set aside, avoided or recovered from the Lender by or for the benefit of any insolvency or bankruptcy estate, including attorneys' fees, costs and expenses incurred by the Lender with respect to defense of any actions against the Guarantor or the Lender to obtain such payment, whether or not (i) the Guaranteed Obligations have been paid in full, (ii) the Lender has released any security given by the Guarantor to the Lender to secure Guarantor's obligation under this Guaranty, or (iii) the Lender has otherwise released or discharged the Guarantor or returned or cancelled this Guaranty; and, interest, costs and fees accruing after the filing of a bankruptcy petition by or against the Borrower, even though such interest, costs and expenses may not be allowable, in whole or in part, in such bankruptcy case.

3. **Consideration.** Guarantor acknowledges that it has made this Guaranty to induce Lender to make, or extend the date for payment of, advances to Borrower of the Loan and that Lender is making, or extending the day for payment of, such advances to Borrower in reliance upon this Guaranty and would not make such advances without the appropriate execution and delivery of this Guaranty. Guarantor represents and warrants that Guarantor has a financial interest in Borrower and will receive substantial economic benefit by reason of Lender extending the Loan to Borrower; provided, however, that Guarantor's liability hereunder shall not be affected or impaired by Guarantor's disposition or loss of its financial interest in Borrower or by reason of Lender's refusal in accordance with the terms of the Loan Documents to make Loan advances to Borrower.

4. **Nature of Guaranty.**

(a) **Unconditional, Absolute and Not Contingent.** This is an irrevocable, unconditional and absolute guaranty of payment and performance, not of collection, and Guarantor agrees that the liability of Guarantor on this Guaranty shall be immediate and shall not be contingent upon the exercise or enforcement of any lien or realization upon any security or Collateral Bank may at any time possess. Any one or more successive and/or concurrent actions may be brought hereon against Guarantor either in the same action, if any, brought against Borrower or in separate actions, as often as Lender, in its sole and absolute discretion, may deem advisable. No election to proceed in one form of action or proceeding, or against any party, or on any obligation, shall constitute a waiver of Lender's right to proceed in any other form of action or proceeding or against other parties unless Lender has expressly waived such right in writing. Specifically, but without limiting the generality of the foregoing, no action or proceeding by Lender against Borrower under any document or instrument evidencing or securing the Guaranteed Obligations, including but not by way of limitation, the Loan Documents of Borrower to Lender shall serve to diminish the liability of Guarantor, except to the extent Lender realized payment by such action or proceeding, notwithstanding the effect of any such action or proceeding upon Guarantor's right of subrogation against Borrower. Receipt by Lender of payment or payments with knowledge of the breach of any provision or any of the Guaranteed Obligations or Loan Documents shall not, as to the

Guarantor, be deemed a waiver of such breach. All rights, powers and remedies of Lender hereunder and under any other agreement now or at any time hereafter in force between Lender and the Guarantor shall be cumulative and not alternative and shall be in addition to all rights, powers and remedies given to Lender by law. The Guaranteed Obligations of Guarantor are unconditional, notwithstanding any defect in the genuineness, validity, regularity or enforceability of any of the Guaranteed Obligations or any of the Loan Documents.

(b) **Continuing Guaranty.** This is a continuing Guaranty, independent of and in addition to any other Guaranty, endorsement or Collateral held by Lender therefore, whether or not furnished by the Guarantor. A revocation of this Guaranty may be made by the Guarantor by a writing signed by the Guarantor, or, if deceased, by its personal representative, and delivered to the Lender and shall become effective at the opening of business on the banking day next succeeding the receipt and acknowledgement thereof by Lender. No revocation shall in any way affect the Guaranteed Obligations of Guarantor to Lender with respect to the Guaranteed Obligations created or incurred prior to revocation. Revocation by any one or more of the Guarantors will not affect the Guaranteed Obligations of the remaining Guarantors or any of them. Notwithstanding any such revocation, this Guaranty shall remain in full force and effect until all of the Guaranteed Obligations contracted for or created before such notice, and any extensions or renewals thereof, whether made before or after such Guaranteed Obligations are created, together with interest accruing thereon, after such notice, shall be paid in full. Payment of all Guaranteed Obligations from time to time shall not operate as a discontinuance of this Guaranty, unless revocation as above-provided has been delivered to and acknowledged by Lender.

(c) **Joint and Several Guaranty.** The Guaranteed Obligations of each Guarantor under this Guaranty and all other Guarantors of the Guaranteed Obligations under all other Guarantys, whether executed contemporaneously herewith or at any time prior to or after the date hereof, are and will be joint and several. The Lender may release or settle with any one or more of the Guarantors at any time without affecting the continuing liability of the remaining Guarantor or Guarantors. The failure of any other person to sign this Guaranty shall not release or affect the Guaranteed Obligations or liability of the Guarantor. The Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement thereof.

(d) **Unenforceability/Bankruptcy.** Guarantor agrees to pay the Guaranteed Obligations in accordance with the terms of each document evidencing such Guaranteed Obligations regardless of whether (i) such terms are held unenforceable, void or of no effect against the Borrower; or (ii) a voluntary or involuntary case in bankruptcy or receivership is commenced by or against Borrower. The Guarantor agrees to pay principal, interest, late charges, attorneys' fees and all other sums owing pursuant to the terms of each document evidencing the Guaranteed Obligations, regardless of whether the Borrower is

held liable for such amounts.

(e) **Expenses/Preferential Payments.** Guarantor further agrees to pay all reasonable expenses incurred by Lender in Connection with enforcement of its rights under the Guaranteed Obligations, the Loan Documents, this Guaranty, or in the event the Lender is a party to any litigation because of the existence of the Guaranteed Obligations, the Security Documents or this Guaranty, as well as court costs, collection charges and reasonable attorney fees and disbursements. Guarantor further agrees that to the extent Borrower or any other party makes a payment or payments to Lender on the Guaranteed Obligations, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause, then, notwithstanding any termination of this Guaranty or the cancellation of any note or other agreement evidencing the Guaranteed Obligations of Borrower, to the extent of such payment or repayment, the Guaranteed Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if said payment or payments had not been made.

(f) **No Obligation to Enforce Against Borrower.** As a condition of payment or performance by the Guarantor, the Lender is not required to seek to enforce any remedies against the Borrower or any other party liable to the Lender on account of the guaranteed debt; nor is the Lender required to seek to enforce or report to any remedies with respect to any security interest, lien or encumbrance granted to the Lender by the Borrower or any other party on account of the guaranteed debt.

5. **Security for Guaranty.**

(a) **Collateral.** Guarantor pledges to the Lender all payments to Guarantor from Borrower ("Collateral") as security for payment and performance of the Guaranteed Obligations. The Lender shall not be obligated to release its security interest in the Collateral until the Guaranteed Obligations are paid in full; provided, however, subject to Lender's rights set forth in Sections 11(a), (b), (c) herein, and until the occurrence of an Event of Default (as defined in the Loan Agreement), the Lender's security interest shall not be deemed to restrict the Guarantor's access to, and ability to use in the ordinary course, the Collateral. The Guaranteed Obligations shall not be considered paid in full until all payments to the Lender are no longer subject to any right, by any person, to invalidate or set aside such payments or to seek to recoup the amount of such payments or to declare such payments to be fraudulent or preferential.

(b) **Default; Additional Collateral; Remedies.** Upon the occurrence of default under any of the Loan Documents or upon non-payment when due or maturity of any of the Obligations, Lender may demand that the Guarantor furnish further security as shall be satisfactory to the Lender or the Lender may immediately appropriate, collect, sell and realize upon the Collateral

in accordance with the terms of the documents executed in connection with the Collateral. The Lender may apply the proceeds of any such sale to the payment of the Guaranteed Obligations in such order as the Lender may elect. The Collateral may be released, exchanged or surrendered by the Lender and any balances to the credit of Borrower may be surrendered by the Lender without impairing or affecting the liability of any Guarantor.

6. **Guarantor Waivers.** The Guarantor hereby waives: (a) notice of acceptance of this Guaranty and of creations of Guaranteed Obligations of Borrower to Lender; (b) presentment and demand for payment of any Guaranteed Obligations of Borrower; (c) protest, notice of protest, and notice of dishonor or default to the Guarantor or to any other party with respect to any of the Guaranteed Obligations or Loan Documents; (d) any demand for payment under this Guaranty; (e) any defense arising by reason of any disability or other defense of Borrower by reason of the cessation from any cause whatsoever of the liability of the Borrower, including, without limitation, failure of consideration, breach of warranty, fraud, payment, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations, lender liability, accord and satisfaction, and usury; (f) any rights to extension, composition or otherwise under the Bankruptcy Code or any amendments thereof, or under any state or other federal statute; and (g) any right or claim or claim of right to cause a marshalling of Borrower's assets. No notice to or demand on the Guarantor shall be deemed to be a waiver of the obligation of the Guarantor or of the right of Lender to take further action without notice or demand as provided herein; nor in any event shall any modification or waiver of the provisions of this Guaranty be effective unless in writing nor shall any such waiver be applicable except in the specific instance for which given.

7. **Guarantee Unimpaired by Subsequent Events.** Except as otherwise provided herein, Guarantor hereby expressly waives the right to receive notice of, to consent to, or receive any additional consideration on account of any of the following, and Guarantor hereby agrees that its obligations under this Guaranty shall not be released, diminished, impaired, reduced, or otherwise affected by the occurrence of any of the following events (or the fact that any of such events have occurred):

- (a) The amendment, renewal, extension, restatement, waiver, indulgence or assignment of any part or all of the Guaranteed Obligations or any part of the Plans, the Loan Documents, or other documents evidencing, securing, or pertaining thereto, or any other forbearance or agreement by Lender to accept a deferred payment or performance of any Guaranteed Obligations, including extension of time for payment of any of the Guaranteed Obligations, any changes in the terms of the Guaranteed Obligations, including an increase or decrease in installment payments or any interest rate adjustments any discharge of the Borrower, or any other change in the Guaranteed Obligations, including a change in the business structure of the Borrower.

- (b) Any settlement or compromise in connection with the Guaranteed Obligations or the Loan Documents, including the cancellation of any part of the Guaranteed Obligations or the release of Borrower, any Guarantor, or any other Person from liability for all or any part of the Guaranteed Obligations, it being acknowledged and agreed by Guarantor that Guarantor may be required to pay or perform the Guaranteed Obligations in full without the assistance or support of any other party, and Guarantor has not been induced to enter into this Guaranty on the basis of any contemplation, belief, understanding, or agreement that any other party shall at all times be liable to pay or perform the Guaranteed Obligations or that Lender shall look to other parties to pay or perform the Guaranteed Obligations (provided that nothing herein shall affect the rights of any Guarantor against any other Guarantor);
- (c) The failure to perfect a lien (or the unenforceability of any lien) in any collateral intended as security for any part of the Guaranteed Obligations, or the release of, the surrender of, the exchange of, or the substitution of all or any part of such collateral; or the subordination of any lien securing any of the Guaranteed Obligations to any other lien or liens covering such collateral; or the deterioration, waste, loss, or impairment (including without limitation, negligent, willful, unreasonable, or unjustifiable impairment) of any such collateral, it being acknowledged by Guarantor that Guarantor is not entering into this Guaranty in reliance on or in contemplation of the benefits of any collateral for the Guaranteed Obligations, the value thereof, or the validity or enforceability of any security interest therein;
- (d) The addition of any collateral as security for, or the addition of any person as a party with liability for, the payment or performance of all or any part of the Guaranteed Obligations, or surrender, release, exchange or substitution of any Collateral;
- (e) Any substitution, exchange, release or other disposition of all or any part of the Guaranteed Obligations or Loan Documents;
- (f) Any action with respect to any of the Guaranteed Obligations or any documents evidencing, securing, or pertaining thereto, including but not limited to, any settlement or compromise of any amount due thereunder, the pursuit of any particular remedy before any other remedy or the exercise of, or waiver or failure to timely exercise, any right conferred thereunder, the exercise of such rights being wholly discretionary with Lender;
- (g) Any subordination of payments under the Guaranteed Obligations or Loan Documents to any other debt or claim;

- (h) Any change in the composition, status, or form of organization, or the death, insolvency, bankruptcy, disability, or lack of authority, of Borrower, any other guarantor or any other Person at any time liable for the payment or performance of all or any part of the Guaranteed Obligations;
- (i) Any advances for the purpose of performing any covenant or agreement of the Borrower, or curing any breach or event of default in the Loan Documents;
- (j) Any neglect, delay, omission, failure, or refusal of Lender to act in connection with the Guaranteed Obligations or the Loan Documents or to foreclose on any collateral for the Guaranteed Obligations or to sue or take any other action to enforce the collection or performance of all or any part of the Guaranteed Obligations or any right contained in any document evidencing, securing, or pertaining thereto;
- (k) The failure of Lender to exercise diligence, commercial reasonableness or reasonable care in the preservation, protection, enforcement, sale, or other handling of all or any part of the collateral for any of the Guaranteed Obligations or in bringing suit against Borrower, any Guarantor, or any other party to enforce any of the Guaranteed Obligations or any other liability of any such party; or
- (l) Any act or omission of the creditor (except acts or omissions in bad faith) that materially increases the scope of the Guarantor's risk, including negligent administration of the Loan.

8. **Guarantor Representations and Warranties.** The Guarantor represents and warrants that: (a) this Guaranty is executed and delivered at Borrower's request; (b) Guarantor has reviewed or has had an adequate opportunity to review all of the terms and provisions of the Plans, the Loan Agreement, and the other Loan Documents; (c) Guarantor is not relying on and the Lender has made no representations to the Guarantor as to the creditworthiness of the Borrower; (d) the Guarantor assumes full responsibility for obtaining from the Borrower on a continuing basis financial and other information pertaining to the Borrower's financial condition, the Project and the progress of construction of the Improvements, and Guarantor is and will remain informed of the foregoing and all of the circumstances which bear upon the risk of non-payment of the Guaranteed Obligations guaranteed hereby. The Guarantor agrees that the Lender is not obligated to inform Guarantor of any such circumstances, whether now existing or hereafter arising, and that the Lender is not required to inquire as to the powers of the Borrower or the officers, directors, partners, members or agents acting or purported to act on its behalf, and any of the Guaranteed Obligations made or created in reliance upon the

professed exercise of such powers shall be guaranteed hereunder. The Guarantor agrees to keep adequately informed of any facts, events or circumstances which might in any way affect the risks of the undersigned under this Guaranty. The Guarantor waives any duty on the part of the Lender, and agrees that it is not relying upon nor expecting the Lender to disclose to the Guarantor any fact now or later known by the Lender, whether relating to the operations or conditions of the Borrower, the existence, liabilities or financial condition of any co-guarantor of the Guaranteed Obligations, the occurrence of any default with respect to the Guaranteed Obligations, or otherwise, notwithstanding any effect these facts may have upon the Guarantor's risk under this Guaranty or the Guarantor's rights against the Borrower. The Guarantor knowingly accepts the full range of risk encompassed in this Guaranty, which risk includes without limit, the possibility that the Borrower may incur Guaranteed Obligations to the Lender after the financial condition of the Borrower, or its ability to pay its debts as they mature, has deteriorated or the possibility that without the Guarantor's consent, the Lender may change or modify the terms and conditions of the Guaranteed Obligations including but not limited to, increasing the interest rate or rates applicable to the Guaranteed Obligations or extending the time of payment of the Guaranteed Obligations.

8. **Subordination/Subrogation.** In any event that Guarantor shall advance or become obligated to pay any sums to the Borrower, or in the event that for any reason Borrower or any subsequent owner of any Collateral granted as security to Lender under the Loan Documents is now or shall hereafter become indebted to Guarantor, the amount of such Guaranteed Obligations shall at all times be subordinate as to lien, time of payment and in all other respects, to the amounts owing to Lender by Borrower with regard to the subject property or any right to participate in any way therein or in the right, title or interest of Lender in such property, all rights of subrogation and participation being hereby expressly subordinated as aforesaid. Guarantor hereby irrevocably and unconditionally waives all rights Guarantor may have, at law or in equity to seek or claim subrogation (including any right of subrogation hereafter arising against Borrower resulting from a right of contribution from any other Guarantor) contribution, indemnification, or any other form of reimbursement from the Borrower or from any other Guarantor by virtue of any payment(s) made to Lender under this Guaranty or otherwise, until the Guaranteed Obligations are paid in full. Guarantor acknowledges and agrees with Lender that if Lender shall at any time be required to return or restore to Borrower or to any trustee in bankruptcy, any payment(s) made upon the Guaranteed Obligations, this Guaranty shall continue in full force and effect or shall be fully reinstated, as the case may be, and Guarantor's Guaranteed Obligations to Lender under this Guaranty shall be increased by the amount of any such payment(s) upon the Guaranteed Obligations as Lender shall be obliged to return or restore, plus interest thereon at the rate provided in the evidence of Guaranteed Obligations applicable to any such payment(s) from the date(s) the payment(s) upon the Guaranteed Obligations was originally made. Guarantor agrees to indemnify and hold Lender harmless from and against any and all costs, fees and expenses including, without limitation, reasonable attorneys' fees and allocated

costs of counsel, in connection with the Lender's defending any preference or fraudulent conveyance claim or action brought against Lender in any bankruptcy proceeding concerning Borrower or any Guarantor.

10. Guarantor's Financial Condition: Representations and Warranties/Notice/Financial Statements. Guarantor represents, warrants and covenants to Lender that, as of the date of this Guaranty: the fair salable value of Guarantor's assets exceeds its known liabilities after giving effect to this Guaranty; Guarantor is meeting its current liabilities as they mature; any financial statements of Guarantor furnished Lender are true and correct and include in the footnotes thereto all contingent liabilities of Guarantor; since the date of said financial statement there has been no material adverse change in the financial condition of Guarantor; and there are not now pending any material court or administrative proceedings or undischarged judgments against Guarantor and no federal or state tax liens have been filed or threatened against Guarantor, nor is Guarantor in default or claimed default under any agreement for borrowed money, which will not be cured by payment from the proceeds of the Loans as contemplated by the Construction Loan Agreement. Guarantor agrees to immediately give Lender written notice of any material adverse change in its financial condition, including but not limited to litigation commenced, tax liens filed, default claimed under its indebtedness for borrowed money or bankruptcy proceedings commenced by or against Guarantor. Guarantor shall deliver, timely to Lender, annual financial statements as required by the Construction Loan Agreement and permit Lender or its representatives to inspect at Guarantor's offices, its financial records and properties and make extracts therefrom in order to evaluate the financial condition of Guarantor. Guarantor is fully aware of the financial condition of the Borrower. Guarantor delivers this Guaranty based solely upon its own independent investigation and in no part upon any representation or statement of Lender with respect thereto. Guarantor is in a position to and hereby assumes full responsibility for obtaining any additional information concerning Borrower's financial condition as Guarantor may deem material to its Guaranteed Obligations hereunder; and Guarantor is not relying upon nor expecting Lender to furnish it any information in the Lender's possession concerning Borrower's financial condition.

11. Lender's Rights and Obligations

(a) The Lender may from time to time take Collateral from Borrower to secure the Guaranteed Obligations, and Guarantor agrees that Lender may, without notice to or consent from Guarantor, release any Collateral now held, or hereafter acquired, or substitute other Collateral, and no such action shall release or diminish the Guaranteed Obligations of Guarantor hereunder. Lender has no duty to marshal security, to sue, or otherwise attempt collection from Borrower or any other party, to take proceedings against any Collateral it may have or any property, or to take any action of any sort, prior to demanding and enforcing payments to Guarantor. Specifically, but without limiting the foregoing, the Guarantor waives any right to have Borrower joined in a suit brought against Guarantor on this Guaranty and also any right to require Lender

to sue Borrower on any Obligation guaranteed hereby as a prerequisite to any action by Lender against Guarantor.

(b) Lender, at its option, and without notice, may apply to payment of the Guaranteed Obligations the balance in any deposit, checking or savings account maintained with Lender by any Guarantor or Borrower or any deposit evidenced by certificate of deposit (whether or not matured) issued by Lender and held by any Guarantor or Borrower. Any payment received by Lender from Borrower or from any Guarantor or from any source may be applied to the Guaranteed Obligations in whatever order Lender elects.

(c) The Lender shall have no obligation to protect, secure or insure any property which secures the Guaranteed Obligations. Guarantor's Guaranteed Obligations hereunder shall in no way be impaired, affected, reduced or released by reason of (i) the Lender's failure or delay to do or take any of the acts described above or (ii) the invalidity, unenforceability, loss or change in priority or reduction or loss of value of any security interest in or lien or encumbrance on said property, (iii) the cessation of the Borrower's obligation with respect to any part of the Guaranteed Obligations by operation of law or otherwise, or (iv) the valuation for any purpose of any property securing the Guaranteed Obligations in any bankruptcy or insolvency proceedings.

12. Obligations of Guarantor on Default. If an Event of Default should occur that is a failure by any party to pay or to perform any part of the Guaranteed Obligations when due, the Guarantor shall, within five (5) business days after written demand of Lender to Guarantor; (a) cure such failure to pay and/or commence to perform the applicable part of the Guaranteed Obligations in which event the Guarantor paying or performing same shall be entitled (subject to the terms and provisions of (i), (ii), and (iii) of this Section 13 then and thereafter to receive any Loan funds then available therefore pursuant to the provisions of the Loan Agreement as if no Event of Default had occurred; (b) diligently procure completion of the Improvements at Guarantor's sole cost and expense; (c) fully pay and discharge all claims, including for labor performed and material and services furnished in connection with the construction of the Improvements, subject to the provisions of the Loan Documents; including the right thereunder to contest such claims; and (d) pay Lender all reasonable attorneys fees and costs it incurs in enforcing the performance or the payment of the Guaranteed Obligations and interest at the Default Interest Rate on all past due portions of, and/or sums Lender has advanced to satisfy portions of, the Guaranteed Obligations pursuant to the Loan Agreement. Lender agrees that (i) in the event that and so long as Guarantor is not in default of the terms, conditions, provisions, and obligations hereunder beyond applicable grace periods; (ii) in the event that and so long as Guarantor is timely paying or performing the Guaranteed Obligations as required herein based on the written request of Lender and without the requirement of any legal proceeding to enforce the same; and (iii) after Guarantor commences and diligently continues to pay or perform a portion of the Guaranteed Obligations after written request of the Lender, there is no further Event of Default by Borrower under the Loan

Agreement or failure by Guarantor in payment or performance of the Guaranteed Obligations hereunder, Lender shall continue to advance any Loan funds then available pursuant to the provisions of the Loan Agreement as if no Event of Default had occurred and shall not institute foreclosure proceedings under the Mortgage or charge interest at the Default Interest Rate under the Loan during the period after which the Guarantor first pays or performs a portion of the Guaranteed Obligations after written request of Lender and prior to the date that one of the conditions described in items (i), (ii), and (iii) is no longer met. It is expressly understood and agreed that Lender may institute such foreclosure proceedings and/or charge interest at the Default Interest Rate under the Loan, notwithstanding Guarantor's compliance and timely performance hereunder, should any Event of Default exist that is not cured promptly after (a) receipt by Guarantor of written notice thereof, or (b) a written demand by Lender to Guarantor pursuant to this Section 13.

13. Certain Additional Representations, Warranties and Acknowledgements. Guarantors hereby represent, warrant and acknowledge that (a) counsel of Guarantors' own choosing has advised Guarantors in the negotiation, execution and delivery of this Guaranty, (b) Lender has no fiduciary relationship to Guarantors, the relationship between them being solely that of debtor and creditor, (c) no joint venture exists between Guarantors and Lender, and (d) Guarantors expect to derive substantial benefits from the Loan. Lender may rely conclusively on the continuing acknowledgment, representation and warranty, hereby made, that Guarantors will be benefited by Lender's making of the Loan to Borrower, and Lender shall have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty shall be effective and enforceable by Lender without regard to the receipt, nature or value of any such benefits.

14. Notices. All notices, requests, demands and consents to be made hereunder to the parties hereto shall be in writing and shall be sent by registered mail or certified mail, postage prepaid, return receipt requested, through the United States Postal Service to the addresses shown below or such other address which the parties may provide to one another in accordance herewith. Such notices, requests, demands and consents shall be deemed given on the second Business Day after deposit in the United States mail. As used herein, the term "Business Day" shall mean any day other than a Saturday, Sunday or other day on which banks in the City and County of Oakland, Michigan are authorized to close.

15. Limitation of Liability. Lender shall have no liability with respect to, and guarantors hereby waive, release and agree not to sue for, (a) any loss or damage sustained by Guarantors or any of them that may occur as a result of, in connection with, or that is in any way related to, any act or failure to act by Lender with respect to any matter referred to in this Guaranty, or (b) any special, indirect or consequential damages suffered by Guarantors or any of them in connection with any claim arising under or related to this Guaranty or the relationship created thereby.

16. **Miscellaneous.**

(a) **Loan Documents.** The Loan Documents are hereby made a part of this Guaranty by reference thereto, with the same force and effect as if fully set forth herein.

(b) **Guaranteed Obligations.** No agreement exists between Guarantor and Lender that the Guaranteed Obligations of Guarantor under this Guaranty are or shall be other than as set forth herein. The rights and remedies of Lender under this Guaranty are cumulative and may be exercised singly or concurrently, and exercise of any one or more of them shall not be a waiver of any other.

(c) **Binding Effect/Joint and Several Liability.** Each reference herein to Lender shall be deemed to include its successors and assigns, in whose favor the provisions of this Guaranty shall also run. The term "Guarantor" as used in this Guaranty shall, if this instrument is signed by more than one party, mean the "Guarantor and each of them, jointly, jointly and severally, and severally." In the event of the death of the Guarantor, this Guaranty shall continue in effect against the estate of said Guarantor. The pronouns and relative words herein used shall be read as if written in the plural, feminine, masculine or neuter form so as to appropriately refer to the parties designated.

(d) **Liability Unconditional** Each of the persons who has signed this Guaranty has unconditionally delivered it to the Lender, and failure to sign this or any other Guaranty by any other person shall not discharge the liability of any signer. The unconditional liability of the signer applies whether it is jointly and severally liable for the entire amount of the debt, or for only a pro-rata portion.

(e) **No Oral Amendment.** No amendment, waiver, change, modification or discharge of this Guaranty or any of the Guaranteed Obligations created hereby shall be effective unless signed by the Lender.

(f) **Termination.** Notwithstanding anything herein contained, this Guaranty shall become null and void and the liability of the Guarantor terminated in the event that the Construction Loan Agreement is terminated due to payment in full of the Guaranteed Obligations and all other sums and payment which may be or become owing under the Guaranteed Obligations, or elsewhere provided for herein, or in any of the Loan Documents.

(g) **Entire Agreement.** This writing is intended by the parties as a final expression of this guaranty agreement, and is intended as a complete and exclusive statement of the terms of that agreement. No course of dealing, course of performance, or trade usage, and no parol evidence of any nature, shall be used to supplement or modify its terms. There are no conditions to the

full effectiveness of this agreement, other than default by the Borrower.

(h) **Waiver of Jury Trial.** Guarantor acknowledges that the right to trial by jury is a constitutional right, but that the same may be waived. Guarantor, after consultation (or having had the opportunity to consult) with counsel of its choice, knowingly and voluntarily, hereby waives any right to trial by jury in the event of litigation regarding performance or enforcement of, or in any way related to, this Guaranty.

(i) **Jurisdiction.** This Guaranty shall be governed by the laws of the State of Michigan.

(j) **Counterparts.** This Guaranty may be executed in several counterparts, and each executed counterpart shall constitute an original instrument, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Guarantor hereto has caused these presents to be executed all as of the day and year first above written.

Oscar E. Stefanutti, individually
SS#: 379-44-1082

STATE OF MICHIGAN)
) ss.
COUNTY OF)

The foregoing instrument was executed before me, a Notary Public in and for the above mentioned State and County, this ___ day of ___, 2004 by Oscar E. Stefanutti, to me known to be the person who executed the same and who acknowledged the foregoing to be his free act and deed.

Notary Public, _____ County
State of Michigan
My Commission Expires:

William N. Widmyer, individually
SS#: 277-30-0108

STATE OF MICHIGAN)
) ss.
COUNTY OF)

The foregoing instrument was executed before me, a Notary Public in and

for the above mentioned State and County, this ___ day of ___, 2004 by William N. Widmyer, to me known to be the person who executed the same and who acknowledged the foregoing to be his free act and deed.

Notary Public, _____ County
State of Michigan
My Commission Expires:

Fred Gordon, individually
SS # 367-32-8932

STATE OF MICHIGAN)
) ss.
COUNTY OF)

The foregoing instrument was executed before me, a Notary Public in and for the above mentioned State and County, this ___ day of ___, 2004 by _____, to me known to be the person who executed the same and who acknowledged the foregoing to be his free act and deed.

Notary Public, _____ County
State of Michigan
My Commission Expires:

The Stefanutti Family Limited
Partnership,
A Michigan limited partnership
By: Stefanutti, LLC
 A Michigan limited liability
 company
Its: General Partner

By: _____
 Oscar E. Stefanutti
Its: Authorized Member

STATE OF MICHIGAN)
) ss.
COUNTY OF)

The foregoing instrument was executed before me, a Notary Public in and for the above mentioned State and County, this ___ day of ___, 2004 by Oscar E. Stefanutti, the Authorized Member of Stefanutti, LLC, a Michigan limited liability company, the General Partner of the Stefanutti Family Limited Partnership, a

Michigan limited partnership, to me known to be the person who executed the same and who acknowledged the foregoing to be his free act and deed.

Notary Public, _____ County
State of Michigan
My Commission Expires:

REFCO, Inc.,
a Florida corporation

By: _____
Fred Gordon
Its: President

STATE OF MICHIGAN)
) ss.
COUNTY OF)

The foregoing instrument was executed before me, a Notary Public in and for the above mentioned State and County, this ____ day of ____, 2004 by _____, to me known to be the person who executed the same and who acknowledged the foregoing to be his free act and deed.

Notary Public, _____ County
State of Michigan
My Commission Expires:

EXHIBIT E

MORTGAGE

COMMERCIAL SECOND MORTGAGE

The mortgagor, Brown Road Group, LLC, of 115 South Main Street, Suite 300, Royal Oak, Michigan, makes this mortgage to the mortgagee, Oakland County, of 1200 N. Telegraph Road, Pontiac, Michigan, 48341, on February ____, 2004.

To secure

1. payment of the principal of \$700,000 and interest, payable in installments, the last of which is due by February ____, 2009, in accordance with the terms of a promissory note issued by the mortgagor on this date;
2. the performance of the obligations under this mortgage and the payment of the mortgagee's expenses for the performance of the obligations;
3. the mortgage debt and the mortgagor's obligations under any other loan documents associated with this mortgage or the note;

the mortgagor mortgages and warrants to the mortgagee and its successors and assigns the property in the City of Auburn Hills, Township of Orion, Oakland County, Michigan, described as

PART OF THE NORTHEAST FRACTIONAL ¼ OF SECTION 2, TOWN 3 NORTH, RANGE 10 EAST, CITY OF AUBURN HILLS, OAKLAND COUNTY, MICHIGAN, AND PART OF THE SOUTHEAST FRACTIONAL ¼ OF SECTION 35, TOWN 4 NORTH, RANGE 10 EAST, ORION TOWNSHIP, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF SECTION 2; THENCE S. 01°-16'-34" E, 1953.02 FEET; THENCE S 88°-43'-56" W, 544.50 FEET; S 01°-16'-34" E, 400.00 FEET; THENCE S 88°-43'-56" W, 808.07 FEET; THENCE N 00°-56'-51" W, 788.36 FEET; THENCE N 86°-22'-22" W 1234.73 FEET; THENCE S 03°-44'-14" W, 10.57 FEET; THENCE S 88°-15'-55" W, 32.03 FEET TO A POINT ON THE EASTERLY LINE OF LAPEER ROAD NORTH 1498.72 FEET AND EAST 83.89 FEET FROM CENTER OF SECTION CORNER OF SECTION 2; THENCE, N 00°-32'-55" E, 298.60 FEET; THENCE, N 00°-09'-05" W, 406.63 FEET; THENCE N 00°-53'-05" W, 400.00 FEET; THENCE S 89°-22'-55" W, 91.42 FEET TO A POINT ON THE CENTER OF SECTION 2; THENCE N 00°-37'-05" W, 376.90 FEET ALONG THE CENTER OF SECTION 2 TO THE NORTH ¼ CORNER OF SECTION 2; THENCE N 89°-00'-21" E, 98.87 FEET TO A POINT DISTANT N 89°-00'-21" E, 33.27 FEET FROM THE SOUTH ¼ CORNER OF SECTION 35; THENCE N 00°-16'-57" W, 384.78 FEET; THENCE N 88°-48'-33" E, 209.21 FEET; THENCE N 12°-36'-36" E, 283.66 FEET; THENCE N 02°-01'-17" W, 101.13 FEET; THENCE N 88°-48'-33" E, 1554.35 FEET; THENCE ALONG A CURVE TO THE RIGHT, RADIUS 340.00 FEET, CHORD BEARS S 60°-55'-35" E, 342.72 FEET, DISTANCE OF 359.19 FEET; THENCE S 30°-39'-42" E, 183.24 FEET; THENCE ALONG A CURVE TO THE LEFT, RADIUS 360.00 FEET, CHORD BEARS S 38°-22'-41" E, 96.67 FEET, DISTANCE OF 96.96 FEET; THENCE S 00°-59'-41" E, 359.82 FEET TO A POINT ON THE SOUTH LINE OF SECTION 35; THENCE N 89°-00'-21" E, 300.00 FEET ALONG THE SOUTH LINE OF SECTION 35 TO THE POINT OF BEGINNING.

along with the following:

1. all easements, rights-of-way, licenses, and privileges pertaining to the mortgaged premises, including all the mortgagor's rights and interests in those easements, rights-of-way, licenses, and privileges, as described in exhibit A, which is attached and made a part of this mortgage
2. all buildings and improvements now or later on any part of the mortgaged premises
3. any tenements, hereditaments, and appurtenances pertaining to the mortgaged premises and any reversions or remainders and also all the mortgagor's rights and interests in them
4. all the rent and issues from present or future leases of the mortgaged premises that are specifically assigned and transferred to the mortgagee, including all rights conferred by MCLA 554.231 et seq., MSA 26.1137(1) et seq. and MCLA 554.211 et seq., MSA 26.1131 et seq.
5. all the mortgagor's rights and interests in the land lying in the bed of any street, whether opened, proposed, or vacated, or in any strip or gore adjoining the mortgaged premises
6. all equipment, fixtures, and personal property, other than consumable goods, now or later on any part of the mortgaged premises and usable in any present or future operation of the mortgaged premises or any buildings now or later on the mortgaged premises and now or later acquired by the mortgagor, including all fixtures and equipment for lighting, heating, cooling, ventilating, air-conditioning, incinerating, refrigerating, plumbing, sprinkling, communicating, and electrical systems, and all the mortgagor's rights and interests in any equipment that might be subject to any title retention or security agreement superior in lien to the lien of this mortgage (the parties agree that all such equipment and property is part of the mortgaged premises subject to this mortgage unless the mortgagee deems otherwise)
7. any awards or payments, including interest, and the right to receive them, that might be made with respect to the mortgaged premises as a result of (a) the exercise of the right of eminent domain; (b) the alteration of the grade of any street; (c) any damage to any improvement on the mortgaged premises; (d) any other injury to or decrease in the value of the mortgaged premises; or (e) any refund of real estate taxes, assessments, or other charges levied on the mortgaged premises, to the extent of all amounts secured by this mortgage when the mortgagee receives the award or payment and of the reasonable counsel fees, costs, and disbursements incurred by the mortgagee to collect such an award or payment (the mortgagor agrees to sign and give any documents that the mortgagee requests to confirm this assignment)

The mortgagor also warrants as follows:

1. The payment of the mortgage indebtedness and the performance of agreements. The mortgagor shall pay the principal and interest of the mortgage debt according to the provisions of the mortgage and perform all its obligations under (a) the note or any other promissory notes later issued for the mortgage debt, (b) this mortgage, and (c) any other loan documents.
2. Promises regarding title. The mortgagor has good title to the entire mortgaged premises except as noted below in fee simple with the right to sell, mortgage, and convey the mortgaged premises. The mortgaged premises has a first mortgage in favor of Huntington National Bank dated June 7, 2002 in the principle amount of approximately \$24,000,000. This commercial second mortgage is subordinate to this first mortgage and any renewal, expansion or replacement of that mortgage. The premises will otherwise remain free of all easements, restrictions, liens, leases, and encumbrances except those that this mortgage specifies. The mortgagor will defend the mortgaged premises against all lawful claims and demands. The mortgagee may take any action it thinks is necessary to defend its lien, to enforce its rights, and to secure the performance of the borrower's obligation under this mortgage, including the lender's right to institute appropriate legal proceedings.
3. The payment of taxes, assessments, and charges. The mortgagor shall pay when due, and before any interest, collection fees, or penalties accrue, all real estate taxes, special assessments, water and sewer charges, and other governmental charges levied on any part of the mortgaged premises. If the mortgagor fails to pay any governmental charges, the mortgagee may pay them.
4. Reserves for taxes and insurance premiums. If the mortgagee requests, the mortgagor shall pay, with the installments of principal and interest, installments for taxes and assessments on the mortgaged premises and for insurance premiums. The tax and insurance installments shall be substantially equal and be sufficient to pay the taxes and premiums at least 30 days before they become due. These amounts need not be kept separate from other payments to the mortgagee, and no interest shall be payable on these amounts. The mortgagee shall hold these amounts as additional security for the mortgage debt and shall use them to pay taxes and premiums when the taxes and premiums become due. However, the mortgagee shall have no liability for any failure to apply the amounts. Nothing in this mortgage shall limit the obligation of the mortgagor to pay taxes. If the mortgagor defaults, the mortgagee may apply the tax and premium amounts to the taxes and premiums or toward any part of the mortgage debt, whether or not they are due.
5. The payment of other debts. The mortgagor shall also pay any other debts that may become encumbrances on the mortgaged premises, including debts for current or future repairs or improvements and for merchandise, services, and utilities for the mortgaged premises. The mortgagor shall not permit any encumbrance securing the repayment of borrowed funds

(including the deferred purchase price for the property) to accrue and remain outstanding against any part of the mortgaged premises or any improvements.

6. Maintenance, repair, and inspection. The mortgagor will keep the mortgaged premises and all the improvements in good repair. The mortgagor will not permit waste on the mortgaged premises or do anything that would decrease the value of the mortgaged premises or impair the lien on the mortgaged premises. If the mortgagor does not make necessary repairs, the mortgagee may make such repairs for the mortgagor. The mortgagee or anyone authorized by the mortgagee may enter and inspect the mortgaged premises at all reasonable times.
7. Insurance.
 - a. The mortgagor shall keep the buildings and other improvements now or later on the mortgaged premises constantly insured for the benefit of the mortgagee until the mortgage debt, all interest on the debt, and all amounts due under this mortgage are fully paid. The insurance coverage must include fire and other risks customarily covered by the standard form of extended coverage endorsement available in Michigan, including risks of vandalism and malicious mischief; flood insurance if the mortgaged premises are in an area that the U.S. Department of Housing and Urban Development considers a flood risk area or that is subject to 42 USC 4001 et seq.; rent insurance; war risk insurance (if available); and other appropriate insurance that the mortgagee requires, in amounts, forms, and with companies that are satisfactory to the mortgagee.
 - b. All such policies shall include standard loss payable clauses in favor of the mortgagee and shall provide that the policy may not be canceled without 30 days' written notice to the mortgagee.
 - c. If the mortgagor fails to insure the premises, fails to pay the premiums, or fails to give the policies or renewals to the mortgagee, the mortgagee may obtain or renew the insurance and pay the premiums for the mortgagor.
 - d. In the event of loss or damage, the proceeds of the insurance shall be paid only to the mortgagee. No such loss or damage shall reduce the mortgage debt. The mortgagee is authorized to adjust any loss without consent from the mortgagor, to receive payments for losses in the name of the mortgagee and the mortgagor, and to endorse the mortgagor's name on any check in payment for losses. The mortgagee may apply such proceeds first to its expenses for collecting the proceeds and then to the mortgage debt or to repair or rebuild the mortgaged premises. No application of proceeds to the mortgage debt shall reduce the amount of the installment payments under the note.
 - e. In the event of a foreclosure of this mortgage, the purchaser of the mortgaged premises shall have all of the rights of the mortgagor

under the insurance policies, including the right to unearned premiums and the right to receive the proceeds of any insurance payable because of loss.

8. Eminent domain. Notwithstanding any taking under the power of eminent domain, alteration of the grade of any street, or other decrease in value of the mortgaged premises by public or quasi-public authority, the mortgagor shall continue to pay the mortgage debt under the note. The mortgagor assigns the entire proceeds of any such award or payment to the mortgagee. The mortgagee may apply such proceeds first to its expenses for collecting the proceeds and then to the mortgage debt or to the alteration, restoration, or rebuilding of the mortgaged premises. No application of proceeds to the mortgage debt shall reduce the amount of the installment payments under the note. Any reduction in the principal that results from such proceeds shall take effect only when the mortgagee receives the proceeds.
9. Waste. The failure of the mortgagor to pay taxes or assessments assessed against the mortgaged premises or insurance premiums for a policy covering the mortgaged premises shall be waste, as provided by MCLA 600.2927, MSA 27A.2927. The mortgagor consents to the appointment of a receiver if the mortgagee seeks relief under the statute.
10. Reimbursement for advances by the mortgagee. The mortgagor shall pay to the mortgagee, on demand, all sums the mortgagee spends
 - a. to pay taxes, assessments, water and sewer charges, other governmental charges, or insurance premiums for the mortgaged premises;
 - b. to maintain, repair, or improve the mortgaged premises, whether spent by the mortgagee or a receiver who is appointed at the request of the mortgagee, unless the sums are paid from the rent and profits from the mortgaged premises;
 - c. to defend the lien of this mortgage against the mortgaged premises subject only to the encumbrances stated in this mortgage;
 - d. to discharge any encumbrance against the mortgaged premises that is superior to the lien of this mortgage and to which this mortgage is not expressly subordinate;
 - e. to cure any default of the mortgagor under any lease or other agreement for the mortgaged premises;
 - f. to cure any default of the mortgagor under this mortgage or the loan documents; or
 - g. to preserve the security of this mortgage or any other security for the mortgage debt or to protect any of the mortgagee's rights under this mortgage. All such expenditures, including reasonable attorney fees, shall be payable on demand, shall be secured by this mortgage, and shall bear interest at the default rate stated in the

note for the mortgage debt, including any penalty interest.

11. Change in taxes. The mortgagor shall promptly pay any taxes for the execution and delivery or recording of this mortgage or any note or other document for the mortgage debt or the mortgagee's interest in the mortgaged premises. The mortgagor shall indemnify the mortgagee against any liability for any such tax. If any law is passed in Michigan after the date of this mortgage that directly or indirectly changes how this mortgage or the note is taxed, the holder of this mortgage may declare the entire unpaid amount of the mortgage debt and accrued and unpaid interest to be due on a specified date not less than 30 days after the mortgagor receives written notice. However, the holder of the note may not do that if the mortgagor is permitted by law to pay the whole tax in addition to other payments required under the mortgage and the mortgagor, before the specified date, pays the tax then due and agrees to pay any such tax later assessed against the mortgaged premises, this mortgage, or the note.
12. Defaults. The following events are defaults under this mortgage that entitle the mortgagee to exercise its remedies under this mortgage and the other loan documents and remedies provided by law:
 - a. The mortgagor defaults on payments for principal or interest of the mortgage debt.
 - b. The mortgagor defaults on its obligations under this mortgage.
 - c. The mortgagor makes any materially false warranty in this mortgage or any of the loan documents.
 - d. The mortgagor defaults on its obligations under any other loan documents and does not cure the default within the grace period.
 - e. Bankruptcy or similar proceedings are instituted by or against the mortgagor, or a receiver or a trustee is appointed for the mortgagor or for any part of the mortgaged premises.
13. Remedies on default. If a default occurs under this mortgage, the mortgagee may take any of the following actions:
 - a. The mortgagee may declare the unpaid balance of the mortgage debt, accrued and unpaid interest, and all charges that the mortgagor must pay to the mortgagee under the loan documents immediately due and, at the mortgagee's option,
 - (1) file a suit for those amounts, or
 - (2) file a suit for any delinquent payment of the mortgage debt, or
 - b. The mortgagee may obtain a receiver to manage the mortgaged premises and to collect the rent and income from them.
14. Successors in ownership. If ownership of any part of the mortgaged premises becomes vested in any parties other than the mortgagor without

written approval from the mortgagee, the mortgagee may deal with such successors as the mortgagor under this mortgage and the loan documents without affecting the mortgagor's liability under this mortgage or for the mortgage debt.

15. Warranties concerning personal property. Except for equipment owned by tenants of the mortgaged premises, the mortgagor warrants that it owns all equipment and other personal property described in this mortgage free of any liens and security interests except for the lien and security interest granted by this mortgage. The mortgagor also warrants it will own all equipment and other personal property that it acquires in the future and brings onto the mortgaged premises free of any liens and security interests except for the lien and security interest granted by this mortgage and by any other security agreement delivered to the mortgagee.
16. Security interest. This mortgage grants a security interest under the Uniform Commercial Code in any equipment and other personal property covered by the mortgage. If the mortgagee requests, the mortgagor will inventory its personal property that is subject to this mortgage and sign any supplements to this mortgage, any separate security agreements, and any financing statements necessary to include all the personal property. If a default under provision 12 occurs, the mortgagee's rights include the right to require the mortgagor to assemble this personal property and to make it available to the mortgagee at a location that the mortgagee designates that is reasonably convenient for both parties; the right to take possession of the personal property, with or without demand and with or without process of law; and the right to sell it and to distribute the proceeds according to law. Any requirement of reasonable notice shall be met if the mortgagee sends the notice to the mortgagor at least five days before the date of the sale or other event giving rise to the required notice. The mortgagee may apply the proceeds of any disposition of such personal property first to the reasonable expenses in connection with the disposition of the personal property, including reasonable attorney fees and legal expenses, and then to the mortgage debt.
17. The assignment of leases and rent. On the date of this mortgage, as security in addition to the property described in this mortgage during the term of this mortgage, the mortgagor assigns to the mortgagee all the mortgagor's rights and interests in all written and oral leases, current or future, for any part of the mortgaged premises. This assignment is subordinated to that provided to the first mortgage holder which has priority. However, the mortgagee does not assume any of the mortgagor's liabilities under any leases by this assignment. The mortgagor also assigns to the mortgagee the rent and profits from the mortgaged premises. If a default occurs under this mortgage or the note for the mortgage debt, the mortgagee may collect the rent and profits, personally or through a receiver, as long as the default exists, during the pendency of any foreclosure proceedings, and during any redemption period. The mortgagor consents to a receivership if the mortgagee thinks it is

necessary or desirable to enforce its rights under this provision. The mortgagee shall be entitled to all the rights conferred by MCLA 554.231 et seq., MSA 26.1137(1) et seq. and MCLA 554.211 et seq., MSA 26.1131 et seq.

18. Other liens. The mortgagor shall agree to any lien, mortgage, security interest, or sale and leaseback transaction for any part of the mortgaged premises.
19. Separability. If any provision of this mortgage conflicts with any Michigan law or is otherwise unenforceable, that provision is void to the extent of the conflict or unenforceability and is severable from and does not invalidate any other provisions of this mortgage.
20. Waiver. No waiver by the mortgagee of any right or remedy granted under this mortgage or failure to insist on strict performance of the mortgagor's obligations under this mortgage shall affect any other right or remedy of the mortgagee or any subsequent exercise of the same right or remedy of the mortgagee under this mortgage. All such rights and remedies of the mortgagee are cumulative.
21. Marshaling. If the mortgagee forecloses on this mortgage or enforces any other rights and remedies under the mortgage, the mortgagor waives any right otherwise available to marshal assets that secure the mortgage debt or to require the mortgagee to pursue its remedies against any other such assets.
22. Notice and hearing on foreclosure. The mortgagor waives all rights to a hearing before a sale in connection with any foreclosure of this mortgage by advertisement and all rights to notice requirements except as stated in the Michigan statute for foreclosure by advertisement.
23. Other documents. The mortgagor shall immediately sign, acknowledge, and give any other documents and do anything else that the mortgagee reasonably requires to confirm and protect the lien of this mortgage or to accomplish the purpose of this mortgage when the mortgagee requests.
24. Notices. Any notice that the mortgagee mails under this mortgage shall be effective when they are sent registered mail, postage prepaid, to the mortgagor at the address given at the beginning of this mortgage or at another address that the mortgagor gives to the mortgagee in writing.
25. Governing law and binding effect. This mortgage shall be construed under Michigan laws and binds the mortgagor and its successors and assigns and any subsequent owners of the mortgaged premises. All of the promises in this mortgage run with the land. This mortgage benefits the mortgagee and its successors and assigns.
26. Headings. The headings in this mortgage are for convenience of reference only and shall not affect the meaning of this mortgage.

WITNESSES

FOR THE BORROWER:

**BROWN ROAD GROUP, LLC
REDEVELOPMENT AUTHORITY**

By:

Fred Gordon
Manager

Dated:

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

This document was acknowledged before me on _____
by on behalf of the Brown Road Group, LLC.

Notary Public, Oakland County, MI
My Commission Expires: _____

Drafted by and when recorded return
to:

EXHIBIT F

WORK PLAN

NOTE: Work Plan to be completed upon further environmental investigation, project costing and subject to Oakland County approval and oversight as described in Sections 1.01, 1.04, 1.09, 1.11 & 1.12. No loan proceeds will be disbursed until the Work Plan is completed and approved by all parties.